TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1966

No. [redacted] 19

HARRIETT LOUISE ADDERLEY, ET AL.,
PETITIONERS,

vs.

FLORIDA.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

PETITION FOR CERTIORARI FILED AUGUST 30, 1965
CERTIORARI GRANTED JANUARY 31, 1966

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 506

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INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 15, 1966

[fol. 2]

IN THE COUNTY JUDGE'S COURT
LEON COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

HARRIETT LOUISE ADDERLEY.

AFFIDAVIT OF CHARGE

Before me, James C. Gwynn, County Judge in and for Leon County, Florida, personally came W. P. Joyce, Sheriff, who, being first duly sworn, says that on the 16th day of September, A.D. 1963, in the County aforesaid, one

> Harriett Louise Adderley did trespass with a malicious and mischievous intent upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County jail; contrary to Section 821.18, Florida Statutes.

Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Florida.

W. P. Joyce.

Sworn and subscribed before me this 17th day of September, 1963.

James C. Gwynn, County Judge, Leon County.

(Seal)

[fol. 3] We, the Jury, Find the Defendant Guilty as Charged, So Say We All.

F. J. Worth, Foreman.

CLERK'S NOTE

The Affidavits of Charge and "Guilty" findings of the other petitioners are identical to that of Harriett Louise Adderley and are not reprinted here.

[fol. 4]

IN THE COUNTY JUDGE'S COURT

IN AND FOR LEON COUNTY, FLORIDA

[Title omitted]

MOTION TO QUASH AND DENIAL THEREOF—
Served October 24, 1963

The Defendants herein, by their undersigned attorneys, move under F.S. § 909.03 to quash the information against them on the following grounds:

1.) The Florida Statute involved and under which the instant action is brought, F.S. § 821.18, is unconstitutional in that said statute violates Defendants' rights to freedom of speech, freedom of assembly, and freedom to petition for redress of grievances guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by Section 5 and Section 13 of the Declaration of Human Rights of the Constitution of the State of Florida, and more specifically, Defendants' rights to peacefully protest to the Tallahassee and Florida general public and government officials existing discriminatory actions against Negroes.

2.) The Florida Statute described in ground one of this Motion is unconstitutional in that said statute violates Defendants' rights to freedom from penal servitude or slavery under the Thirteenth Amendment to the Constitution of the United States as well as Defendants' rights to due process and equal protection of the laws under the Fourteenth Amendment to the Federal Constitution, and more

specifically, Defendants' rights to nondiscriminatory justice under law.

[fol. 5] 3.) The Florida Statute set forth hereinabove does not and cannot constitutionally, under the First and Fourteenth Amendments to the Federal Constitution, encompass Negro citizens' use of county property on which the jail is located for the purpose of peacefully expressing their dissatisfaction with state, county, municipal, etc., racially discriminatory practices and laws, including state laws which render segregated county jails mandatory, i.e., F.S. §§ 950.05-950.08.

4.) The Florida Statute hereinabove described is void for vagueness and unconstitutional under the due process clauses of the Fourteenth Amendment to the Federal Constitution and Section I of the Declaration of Rights of The Florida Constitution in that it fails to prescribe the elements of the offense (i.e., of "other trespasses . . . committed with a malicious and mischievous intent,") with reasonable certainty and to fix an ascertainable standard of guilt and/or in that it includes defendants' rights to freedom of expression, etc., which are constitutionally protected from any state interference or infringement, as set forth hereinabove in grounds 1, 2, and 3 of this motion.

5.) The information is void and is legally insufficient to inform or apprise defendants of the nature and cause of the accusations and charges filed against them as required by Section 11 of the Declaration of Rights of the Florida Constitution and the Sixth and Fourteenth Amendments of the Federal Constitution in that "a malicious and mischievous intent" is highly ambiguous.

6.) The Florida Statute hereinabove described proscribes "other trespasses" upon the property of "another", thereby referring to a *person* in view of prior sections referring to [fol. 6] private property as well as a separate later section (F.S. 821.19) referring to trespass upon *state*-owned

land whereby the information is void on its face as it specifies a trespass not prohibited by Sec. 821.18.

7.) No prosecution under the information may be constitutionally undertaken because the segregated courtrooms existing in the Court in which the information was filed deprive defendants of their rights to a fair trial, equal justice under law, due process, and freedom from state imposed or permitted racially discriminatory policies or practices under the Fourteenth Amendment to the Federal Constitution.

Tobias Simon, Herbert Heiken, and Joseph Segor, Esqs., c/o Florida Civil Liberties Union, Legal Panel, 223 S. E. First Street, Miami 32, Florida, By: Tobias Simon, Of Counsel.

Motion Denied.

Certificate of Service (omitted in printing).

[fol. 7]

IN THE COUNTY JUDGE'S COURT IN AND FOR LEON COUNTY, FLORIDA

No. 110-445B

TRESPASS

STATE OF FLORIDA, Plaintiff,

vs.

JESSE EVANS BLUE, et al., Defendants.

Trial held before Honorable James Gwynn, Judge of said Court in the Leon County Courthouse, Courtroom No. 3, Tallahassee, Florida, October 24, 1963.

APPEARANCES:

For the State:

Sylvan W. Strickland, Prosecuting Attorney, Tallahassee, Florida.

For the Defendants:

Tobias Simon, 223 S. E. First Street, Miami, Florida.

Herbert Heiken, c/o Florida Civil Liberties Union, Legal Panel, 223 S. E. First Street, Miami, Florida.

Joseph C. Segor, 407 Lincoln Road, Miami Beach, Florida.

[fol. 8] The Court: Let the reporter show that on 9/17/63 all defendants entered pleas of not guilty when they were arraigned and were represented at that time by attorney Charles Wilson, Pensacola, Florida, and are now at the present time represented by Tobias Simon, Herbert Heiken and Joseph Segor. Show also that Mr. Wilson at that time requested a non-jury trial but with the right to change that request in the event that any of the defendants wanted a jury trial.

I wish to at this time deny the motion to quash and specifically read into the record that this is not a segregated courtroom. It has never been segregated to my knowledge [fol. 9] since I have been County Judge. The people in this courtroom have a right to sit where they please and No. 7 is entirely out of order as far as I can see.

Mr. Simon: May it please the Court, I'd like to withdraw Paragraph 7. That's included in error. Your Honor is entirely correct and I apologize for the inclusion.

The Court: You may show paragraph 7 is stricken.

(Addressing Jury Panel)

This is not a segregation case but the charges are merely a trespass charge upon property owned by the county and so in answering whether or not you're prejudiced in this type case, I'd like for you to bear in mind that there's no attempt, as far as I know in this case, to integrate anything.

(Jury is selected and sworn and witnesses are sworn.)

The Court: Do you wish to apply the rule?

Mr. Simon: Yes, sir, Your Honor.

(Rule of sequestration is invoked.)

CHARLES DEKLE was called as a witness in behalf of the State and after being duly sworn was examined and testified as follows:

[fol. 10] Direct examination.

By Mr. Strickland:

Q. State your name.

A. Charles Dekle.

Q. And your occupation?

A. Deputy Sheriff and Chief Jailer of Leon County.

Q. Did you say deputy sheriff and chief jailer?

A. That's correct.

Q. Where is the Leon County Jail located?

A. It's located on the corner of Gadsden and Gaines Street.

Q. Is that in the City of Tallahassee, County of Leon, State of Florida?

A. Yes, it is.

Q. Were you such deputy sheriff and chief jailer of Leon County on September 16, 1963?

A. Yes, I was.

• • • • • • •

[fol. 11] Q. State whether or not you saw these defendants in Leon County on September 16, 1963.

• • • • • • •

A. Yes, sir, I did.

Q. At what location?

A. At the Leon County Jail.

Q. Was this in the daytime or nighttime?

A. It was 9:30 A.M. in the morning.

Q. And where were you in the jail when you first saw the defendants?

A. I was sitting at the desk in the front office which is [fol. 12] facing Gadsden Street and also with Gaines Street on the right of the front of the jail.

Q. Tell us what you saw and heard at that time.

A. Well, at that time I heard a lot of singing and hand clapping and I looked up from my desk and I saw this group marching down Gaines Street and they marched across Gadsden Street, came onto the driveway, the entrance to the jail. At that point they turned and came marching down the driveway of the jail.

Q. What did you do when you saw the group coming down the driveway to the jail?

A. When I saw the group coming down the driveway to the jail, I went outside of the office, outside the door to the stoop which is just outside to the steps that leads down to the driveway.

Q. Now, tell us what you did and what the group of people did at that time.

A. Well, at that time the group was coming, they were already down in front of the entrance to the jail. They were coming closer to the entrance. It appeared to me that they were attempting to come into the jail.

Mr. Simon: I object, if Your Honor please, to his conclusion. I move that portion of the answer be stricken and the jury be instructed to disregard it.

[fol. 13] Mr. Strickland: Your Honor, I think the objection is well taken.

The Court: Objection sustained.

By Mr. Strickland:

Q. Approximately how many steps are there leading from the driveway level up to the jail floor level at the front door?

A. Approximately four.

Q. And when you walked out of the front door of the jail, which of the steps did you stand on?

A. I stood at the bottom step.

• • • • • • •

[fol. 14] Q. Approximately how close to the bottom step [fol. 15] at the front door of the jail did the people who got the closest to it at that time come to the bottom step?

A. They were right abreast of me. I would say not more than a foot and a half or two feet at the most.

Q. State how closely together this group of people were in relation to each other.

A. Well, at that point there was more of the group had centered in front of the jail. They were just,— At that point I'd say you would consider them, as far as close together, shoulder to shoulder.

• • • • • • •

[fol. 16] Q. What is the name of the street closest to the jail building on the north side of the jail?

A. Gaines Street.

Q. What is the building closest to the jail building on the [fol. 17] south side?

A. It is the Welfare Department and Juvenile Detention.

Q. Now, what area did this group of people cover at that time in relation to Gaines Street and the Welfare Building where the Juvenile Court is?

A. At that time they covered the distance between the south side of the jail and Gaines Street.

Q. Did I understand you to say a while ago that the group of people coming down Gaines Street toward the jail were singing?

A. Yes, sir, they were singing and clapping their hands.

Q. Now, state how long they kept singing.

A. Well, they continued singing. I don't know exactly how long it was. I couldn't say no definite time but they kept singing from the time that they were in observation until such time as the Sheriff and other officials arrived.

Q. State whether or not at that time there were any prisoners in the jail at the south front side of the jail building?

A. Yes, there were.

Q. Let me add to that question. State whether or not there were any prisoners in the jail at the front of the jail, that is, the portion of the jail nearest to the group [fol. 18] of people who were standing near the Juvenile Court Building.

A. Would you repeat that? I didn't get it straight.

Q. Were there any prisoners in the cells at the southwest corner of the jail building?

A. Yes, there was.

Q. State what, if anything, happened that you heard concerning the prisoners in those cells and the group of people on the outside of the building.

* * * * * * *

A. They were hollering back and forth from the inside of the jail from the cells to the group outside and vice-versa.

* * * * * * *

[fol. 19] Q. Was the Leon County Sheriff at the jail at that time?

A. Not at that time. He arrived a few minutes after them.

Q. Did he just happen to arrive at that time?

A. No, sir. He was called.

Mr. Strickland: You may cross examine.

Cross examination.

By Mr. Simon:

Q. Officer, you say there was a lot of singing and hand-clapping?

A. Yes, sir, there was.

Q. Was there any other noise?

A. Well, that was about the extent of what you could hear.

Q. I heard you say, I think, that you came down to the bottom step and they were about two feet from you or two feet from the bottom step.

A. Approximately a foot and a half or two feet.

Q. Now, did they ever get any closer to the building than that?

A. No, sir. I advised them they could not block the entrance to the jail and I worked them back about middle-ways the driveway.

Q. You asked them to go back?

[fol. 20] A. Yes, I did.

Q. Did they obey you?

A. In a manner, yes, sir.

Q. Well, did they go back to where you were satisfied to have them?

A. Yes, sir.

Q. And did they come close to the jail after that time?

A. Not after that time, no, sir.

Q. Would you say, then, that they did obey the request that you, as an officer of this county, made of them?

A. Yes, sir.

Q. Did anybody get hurt on that day?

A. Not to my knowledge, no, sir.

Q. Anybody get pushed or shoved?

A. No, sir.

Q. Anybody carrying any sticks or stones or bricks or bats or anything like that?

A. I observed none.

Q. Other than the singing and hand-clapping, were they doing anything other than just standing around?

A. Well, they had their own little dance, I guess. They were jumping up and down and singing and clapping their hands.

(At the request of Mr. Simon a blackboard was placed before the jury.)

[fol. 21] Q. Now, Officer, I wonder if you would go up to the blackboard and take a piece of chalk. This is probably to help me more than the jury but if you could draw the jail and draw the streets surrounding the jail so we could have some idea of what you were talking about as far as where these people were.

A. (Drawing sketch.) I'm not much of an artist.

Q. Well, I want to commend you, frankly. I think you're doing a very fine job. It's very hard to draw these things. Now, would you mark out the jail, just mark "jail" over where the jail building is?

A. (So marking.)

Q. All right, and what's that little building right under it?

A. This is a canopy right here. It's still part of the jail. It's the jail but it's a canopy over the driveway.

Q. Would you indicate which direction is north by an arrow?

A. (So marking.)

Q. What's the name of that street you said was on the north side?

A. Gaines Street.

Q. Would you write that down there?

[fol. 22] A. (So marking.)

Q. Now, would you draw a heavy line where the south boundary of Gaines Street is?

A. You mean the jail boundary or just the boundary of Gaines Street?

Q. Well, do I understand from you that in your opinion Gaines Street and the jail property touch each other?

A. With the exception of the sidewalk.

Q. Well, fine. Then draw in the sidewalk.

A. (Making diagram.) This would be the sidewalk and we have a heavy fence right along the sidewalk.

Q. Is this part here the sidewalk?

A. No, the sidewalk would be in between.

Q. In between?

A. This would be the street here.

Q. That's the street over here where I've marked "street"?

A. Yes, sir.

Q. And this is the sidewalk?

A. Yes, sir.

Q. Now, what is on the west of the jail?

A. The west side of the jail would be what we'd call the front of the jail.

Q. Yes, sir.

A. Out right through here, right down through this area [fol. 23] here, we have a little alley. This portion in here is our driveway or entrance into the jail under the canopy there. Immediately in front of it is a parking area we have out here which goes up to this street here. This area in here is parking area.

Q. Would you put "parking" where you indicated parking?

A. (So marking.)

Q. And then right above there is where you indicated the driveway was?

A. The entrance.

Q. Or entrance? And just west of the parking area is another sidewalk, isn't it, and a street?

A. Yes, sir, there is just west of it.

Q. What is that street called?

A. That is Gadsden Street.

Q. Now, if you get tired, sit down. I'm going to ask you some questions and I'm going to refer to this drawing again. You were in attendance upon your duties when you heard the singing?

A. That is correct.

Q. And then you went outside?

A. Yes, I went outside as the group turned in the driveway to the jail.

Q. All right, now, could you show us by a big arrow [fol. 24] which direction the group was coming from and how close they got to you and where the step was that you were standing on?

A. You mean after they turned into the entrance or where I first observed them at?

Q. Well, you'll have to show us where you first observed them and from your own knowledge show the direction they were coming from, if you can.

A. I observed them first right here on this corner at Gadsden and Gaines.

Q. Would you put a big arrow there?

A. And they continued down to the entrance of the jail in which they turned in this direction and came up Gaines.

Q. And how close did they get to you? Where were you standing when you came outside? Put a "Y" there.

A. This will represent the steps.

Q. All right, sir.

A. And I was standing approximately, about as close as I can get it, I was standing on the bottom of those steps when the group approached me.

Q. And were they all in that entrance-way at that time?

A. Yes, sir. They were lined up. Now, I wouldn't say that when they first approached me at that particular point, [fol. 25] that they were all in the entrance here. They were still coming in.

Q. But they eventually all came in the entrance-way?

A. Yes, sir.

Q. You say they were lined up, Officer?

A. Well, no, sir. You know when you get a group of people together how they walk. They're not going to walk in any straight line or march in any straight line.

Q. But they were just walking along. They weren't running or anything like that?

A. Well, as I said previously, they were clapping and jumping and hollering and singing.

Q. All right, and then they came up to within a foot of you and then you asked them to go back?

A. Yes, sir, approximately a foot and a half or two feet. They were right abreast of me.

Q. And where did you ask them to go to and then I understand they went to where you asked them to go? Show me where they went.

A. I did not direct any specific point for them to go to. I just advised them they could not block the entrance to the jail and we kept working them back until we got them back to where I felt that there was sufficient room for them not to obstruct the entrance to the jail.

[fol. 26] Q. Where were they standing when you felt they were no longer obstructing the entrance to the jail?

A. They were standing, I'd say approximately the bulk of the group at that time was standing,— The bulk of the group, I'd say they were standing between half and two-thirds of the way out from under the canopy.

Q. All right, Officer. In other words, at your request these people moved back from the entrance-way, moved west of the entrance-way?

A. To the jail, yes, sir.

Q. And the entrance to the jail was not obstructed?

A. At that point, no, sir.

Q. People could go in and out?

A. Yes, sir, they could move in and out of the jail at that time.

Q. Was any business of the jail to your knowledge interfered with at that point?

A. No, sir.

Q. How many people would you estimate were there?

A. At that point I would have said there were around approximately 175 or 200.

Q. Two hundred? A hundred seventy-five or two hundred?

A. Approximately.

Q. Were any of them in the parking lot?

[fol. 27] A. Not at that time, no, sir.

Q. Were any of them on Gadsden Street?

A. I observed none there. I did not look at Gadsden at that point. I was trying to take care of the security of the jail.

Q. There's a grassy strip along here, isn't there?

A. Yes, sir, very graded.

Q. Was anybody sitting on the grassy strip?

A. I did *not* observe that.

Q. How long did you sit there and observe these 175 or 200 people?

A. "Sit", now, just what do you mean by "sit and observe"?

Q. Well, I'll withdraw the question. After you came out and you got them to stop obstructing the entrance to the jail,— Oh, I might ask you first, how long did it take them to march up and then obey your command and back off?

A. Well, I would say,— Now, you mean from the time they came in to the entrance of the jail until the time I gave the command or order for them to move back, until they moved back?

Q. Right.

A. Well, just a matter of a minute or two. We got it worked back. They didn't just immediately fall back but [fol. 28] we got them back.

Q. Was it just about as fast as 200 people could move back?

A. I would say that, yes, sir.

Q. Assuming that 200 people were willing to obey your command, that was about as fast as 200 people could move under these circumstances?

A. That's right.

Q. Then apparently they were willing to listen to you?

A. I'd say yes.

Q. Now, after they moved back, did you continue to observe them?

A. I was out with them until the point that the sheriff arrived which was just minutes later.

Q. And then what did you do?

A. When the sheriff came, I went back inside the jail and resumed my duties as chief jailer.

Q. You did not observe them any further?

A. No, sir, I did not. I did not observe them any further.

Q. You remained in the jail performing your duties for the next two or three hours?

A. Well, until 2:00 o'clock that afternoon. I was on duty until two that afternoon.

Q. And you left at 2:00 o'clock that day?

A. Yes, sir, I did.

[fol. 29] Q. During the period from the time you went back into the jail until the time you left at 2:00 o'clock, was the business of the jail interfered with in any way by these people?

A. Well, I will say this. The ones that were arrested, we processed those but as far as duties are concerned, as far as any interference with the duties of the jail within, it was not interfered with. Nothing inside of the jail, as far as performance of duties, was interfered with.

Q. Did it break up the routine of helping the prisoners or feeding the prisoners or guarding the prisoners in any way?

A. It didn't break up the routine. It just made a little extra work.

Q. Now, were you in a position, when you were performing your duties, to hear what was going on outside?

A. Outside, no, sir, I was not. I did not try to because, as I say, I had duties I was obligated to inside of the jail and when the sheriff came, at that point I went back inside of the jail and I took up my duties which is required of me.

Q. The noise outside wasn't so loud that it interfered with your duties. Is that correct?

[fol. 30] A. Well, I wouldn't say that it was so loud that it interferred. Of course, we've got to perform those duties regardless of the noise. That wouldn't have made any difference how much noise was going on. We got a certain amount of duties that we got to do and regardless of whether there's noise or whether it's perfectly quiet, we've got to perform those duties. We got to maintain the jail.

Q. Well, I realize, Officer, that you are the State's witness but I'll take a chance and ask you this question anyway. Did you personally find the noise real loud and harmful to you?

A. Yes, sir. It was "blusterous" and I would say it was excessive noise.

Q. Was it excessive for 200 people?

A. Well, I would say it was plenty of noise. Let's put it that way.

Q. Did you hear what was being said or done?

A. Well, about the only thing that I can actually say is I could determine,— That was said, as far as they were singing this Freedom, I believe, is the name of the song they sang, Freedom and—

Q. How does that song go?

A. I don't know.

[fol. 31] Q. How many times was it sung?

A. I cannot tell you that. I do not know.

Q. And they were singing a Freedom song?

A. Yes, sir. That is the song that I remember them singing. I've heard it numerous times but, as I say, I don't know it.

Q. Well, that's all right. Did you hear them singing anything else?

A. Well, they sang a lot of different songs but I don't know them. They was hollering and jumping up and down and clapping their hands, as I stated before, but they sang different songs but I do not know what the names of them are.

Q. Now, you said there was some talk between the 200 who were down on the ground and the other people who were in the jail. Is that right?

A. Yes, sir.

Q. Now, could you tell me who were these other prisoners in the jail? I don't mean their names. Tell me what they were charged with and how many you had.

Mr. Strickland: Objection, Your Honor, on the ground that it's immaterial.

Mr. Simon: Counsel opened the door, Your Honor. I might have agreed, I think I made proper objection that it [fol. 32] wasn't material and Your Honor overruled my objection; and I feel either all that has to be stricken or we should now be allowed to inquire as to what relationship, if any, existed down there between these people.

The Court: What was the door opening that was made?

Mr. Simon: He asked, I wrote it down, he asked were there any prisoners in jail on the south side or any prisoners in jail towards the Juvenile Court Building and then he asked what was going on back and forth between them and I objected to it. Counsel for the State said, well, there may have been something going on between them. Your Honor looked at a law book and overruled my objection. I'd like to find out who the people were that they were talking to. I think it's very material.

The Court: I think that why they were in jail would be immaterial, whether they were in the jail for being drunk or in jail for murder or in jail for—

Mr. Simon: Well, I'll submit, Your Honor, if they were in jail for demonstrating and if they were students at A. & M. it might be material and I would proffer that as the officer's answer.

[fol. 33] The Court: I'm afraid we're going to get into collateral issues and I don't want to try the demonstration here at all.

Mr. Simon: I agree with Your Honor but my hands are tied now because of what counsel did.

Mr. Strickland: Your Honor, I'll withdraw the objection.

The Court: The objection is withdrawn. You may proceed.

A. There were four white females that were incarcerated for contempt of court. There were two white females that were in for being drunk. There were four or five colored females in one of my juvenile cells which were being held in contempt of court.

By Mr. Simon:

Q. Was that contempt, if you know, in connection with the demonstration that had taken place in front of the Florida State Theatre a few nights before?

A. That is correct.

Q. You have separate cells for men and women, do you not, Officer?

A. That is correct, yes, sir.

Q. Is it not a fact that you also keep prisoners separate on the basis of color?

[fol. 34] A. That is true.

Mr. Simon: You may inquire.

Redirect examination.

By Mr. Strickland:

Q. Mr. Dekle, I believe you testified that after you moved the group of people back from the front door of the jail, that the front entrance of the jail was no longer obstructed. Obstructed for what purpose when you say it was no longer obstructed?

A. Well, it was not obstructed to the point that you could get in and out of the jail.

Q. Excuse me, now, but what kind of vehicles of persons could get in and out of the jail?

A. Well, that would pertain to persons only. No vehicles could have possibly, it would not have been clear to that point.

Q. An area on this sketch which you have marked "entrance", what is that?

A. You mean what is it made out of?

Q. No. What is the use of it?

A. It is used for transporting prisoners in to jail.

Q. Is it used for people to walk or something else?

A. It's used for transportation purposes.

[fol. 35] Q. You mean that vehicles come in and out this way?

A. Yes, sir. That is our emergency, well, we could say emergency; that is when our cars or the police cars come in. As you know, we handle the city prisoners but that is an entrance for vehicles primarily when they are bringing anyone to the jail and also for jail supplies.

Q. Is this entrance used for any other purpose besides vehicles, the road that you have just stated? I'm not asking what those purposes are, just whether or not this entrance is used by other vehicles for other purposes. Just "yes" or "no".

A. No. That entrance is strictly for the use, as I stated previously, of the sheriff's department, highway patrol, police department, official cars and supplies and equipment to the jail. It is not a thoroughfare if that's what you mean.

Q. Is this entrance one-way or two-way?

A. It is one-way.

Q. Now, on this sketch where is the exit for motor vehicles which come in this entrance?

A. Well, it comes right on around and comes right back up by the side of this building. This entrance comes right on around, comes right back out, comes right around in [fol. 36] this manner here and comes right back out on Gadsden Street at this point.

Q. After you had moved the people back away from the entrance, meaning the door, the front door and front steps of the jail, state whether or not cars, automobiles would have enough room to come in this entrance and out.

A. They would not as far as vehicles are concerned.

Q. State whether or not at that time the exit portion of the driveway between the jail canopy and the Juvenile Court Building was blocked by some of those people.

A. It was. It was blocked,— The bulk of the people were here but they were scattered all over, all the way over this driveway to the south side of the jail.

Q. From the standpoint of the width of this driveway approximately what percentage of the width was blocked by the people after you had moved them back away from the jail door?

A. I would say approximately half.

Mr. Strickland: No further questions.

Recross examination:

By Mr. Simon:

Q. Officer Dekle, did I understand that you told them to [fol. 37] go back?

A. I asked them to, yes.

Q. And they obeyed you?

A. With some help.

Q. And they went back and you were satisfied to have them at that point?

A. I was satisfied from the standpoint that I had them where they could not enter the jail. That was my primary concern was keeping them out of the jail.

Q. You never asked them to go back any further?

A. No, sir, I did not.

Mr. Simon: Thank you.

Mr. Strickland: No further questions.

SHERIFF W. P. JOYCE was called as a witness in behalf of the State and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Strickland:

Q. State your name.

A. W. P. Joyce.

Q. And what is your occupation?

[fol. 38] A. Sheriff of Leon County.

Q. How long have you been Sheriff of Leon County?

A. January of 1953.

Q. Has that been continuous since that time up until the present date?

A. Yes, sir.

Q. Where is the Leon County Jail located?

A. 402 East Gaines Street.

Q. Where was it located when you took office in January 1953?

A. Same location.

Q. And where has it been located at all times between those two dates?

A. Same location.

Q. During that period of time has anybody other than you, as Sheriff of Leon County, had the possession or the custody of that building?

Mr. Simon: I object on the grounds that there is no evidence before the Court that he has ever had custody or possession of the building. I don't know who has custody or possession of the jail or title, which I think is material in this matter, but I object on the grounds that there is no proper predicate at this point.

[fol. 39] The Court: I think it's a leading question. Would you mind rephrasing your question?

By Mr. Strickland:

Q. State whether or not during the past continuous period of time since the first week in January of 1953 you have

performed any functions or duties in connection with the physical plant and the legal functions within the Leon County Jail.

A. I have been responsible and in authority of the jail during the entire time as sheriff.

Q. Has anybody other than yourself exercised any responsibility or authority over those functions and that physical plant?

Mr. Simon: To which I respectfully object on the ground that it calls for a legal conclusion.

The Court: Objection overruled.

A. I have been responsible for the jail and any operation of the jail has been at my direction through agents or deputies.

By Mr. Strickland:

Q. Has anybody other than yourself, as sheriff, exercised any authority except under your direction and control during that period of time?

Mr. Simon: Same objection.

[fol. 40] The Court: Objection overruled.

A. They have not.

By Mr. Strickland:

Q. State whether or not the Leon County Jail early on Monday morning is a busy place.

Mr. Simon: I object on the grounds that it's immaterial and impertinent, incompetent, irrelevant to the issues in this cause and calls for a conclusion.

Mr. Strickland: If the Court please, one of the elements of the offense charged pertains to mischief and according to the legal definition of "mischief"—

Mr. Simon: I object to counsel reading any legal matters in the presence of the jury at this time.

The Court: Objection sustained on that. I overrule the objection. You may answer the question as to whether or not Monday morning is a busy morning.

A. Every morning is a busy morning. However, Monday morning is the busiest morning that we have at the county jail, consistently the busiest.

Q. What functions do the jailers perform at the Leon County Jail on Monday mornings between the hours of 9:00 and 11:00, say?

A. Besides their routine and regular duties of looking out [fol. 41] for the inmates, feeding them, etc., we have all of our tradesmen call on Monday morning. We also,— Those persons arrested from Friday night on, it's necessary to be brought to the different courts on Monday.

Q. Excuse me. There was a noise in the courtroom. You said it was necessary to bring them where?

A. To the respective courts; those that have been incarcerated, unable to make bond from Friday night forward; therefore, we have a large group that has to be brought up to the courts on Monday mornings for setting bonds and pleas, etc., and we have all our tradesmen come in.

Q. Excuse me. Let me interrupt right there. Is the Leon County Jail a part of the Leon County Courthouse, that is, the physical structure? Is it all in the same building?

A. It is not.

Q. How many city blocks approximately is the Leon County Jail from the Leon County Courthouse where you say that these prisoners are brought on Monday mornings?

A. Approximately seven blocks. That is, the prisoners are brought before the county courts. Now, we also have the city prisoners and the police officers also have to bring [fol. 42] their prisoners from the county jail to the police department and return them on Monday mornings.

Q. What is the method that is used in order to bring or see that the prisoners are delivered to the respective courts on Monday mornings? Excuse me. Not in detail, just the type of transport?

A. They are transported by car or van by the deputies or the police officers.

Q. What are the other unusual duties you started to testify to a minute ago pertaining to Monday mornings at the Leon County Jail?

A. Well, most of our tradesmen, grocers, laundrymen, supply houses, etc., on Monday mornings, come in to make necessary deliveries, replenish supplies, etc.

Q. What is the street that is nearest to the Leon County Jail Building on the north side?

A. On the north side would be Gaines Street.

Q. And what is the nearest physical structure to the south side of the Leon County Jail?

A. That would be the building that houses the Juvenile Judge's Court and part of the Welfare Building.

Q. Will you look at this sketch, please—

Mr. Simon: Counsel, you will stipulate, I am sure, that we can take a picture of this or stipulate on a drawing of [fol. 43] this for insertion in the record. It's pretty hard to put the blackboard in evidence. This was not drawn by Mr. Joyce so if you're going to use it with him, I feel it should be made a part of the record.

By Mr. Strickland:

Q. Does this appear to you to be an approximate diagram of the relationship between the jail building and the streets, the entrance driveway, the parking lot and the Juvenile Court Building?

A. I don't see the Juvenile Court Building indicated there.

Q. Assume for the purpose of discussion that this would be the boundary wall, the north wall of the Juvenile Court Building and the Welfare Building.

A. Generally, yes. Of course, it's not in proportion at all.

The Court: Sheriff, the Juvenile Court Building would not go back that far, would it?

A. I beg your pardon?

The Court: The Juvenile Court Building would not go back that far, would it?

A. That would be the boundary or fence line. The fence line goes all the way back; the building does not.
[fol. 44] May I indicate approximately where it,— Shall I?

By Mr. Strickland:

Q. Let me ask you this question first. Would you rather draw another sketch on the other side of the board to testify from?

A. I can.

The Court: If it would be identical to that one, there's no use in doing it but if there would be any changes in it, I think it would be proper for him to draw it.

By Mr. Strickland:

Q. Did I understand you to say, Sheriff, that this sketch is not exactly proportional?

A. It's generally but, of course, it's not drawn to scale or anything like that. It's a good rough drawing of it but, as I say, the building, the Juvenile Court Building and all that I'm speaking of is not indicated, just a line. The building is along there.

Q. For the purpose of testifying as to what you saw and did at the Leon County Jail on September 16, 1963 would this sketch be sufficient to illustrate that?

A. Yes.

Q. State what office is located in this approximate position.

A. The juvenile office.

Q. The Juvenile Court office?

[fol. 45] A. Yes, sir.

Q. Where were you on the early morning of September 16, 1963?

A. You mean at the time I was at the jail? My location at the jail?

Q. Well, let me word this so it won't be a leading question. Were you in the Leon County Courthouse at 9:00 or 9:30 on Monday morning the 16th of September?

A. I was in the courthouse from about 7:30 Monday morning and I left here somewhere, I don't know, 8:30 or 9:00 o'clock or it might have been a little later.

Q. Now, when you decided that you were going to leave and go down to the jail, what were you doing?

A. I was in a conference with one of the Circuit Judges and five or six attorneys in the Circuit Judges' Chambers.

Q. State whether or not that pertained to a hearing or some judicial proceeding that was about to take place.

A. It did.

Q. And at that point had you planned to leave and go back to the jail at that time?

A. No, sir, I had not.

Q. Did you go to the county jail at that time?

A. I did. I received a message—

[fol. 46] Q. Excuse me. I want to make sure we don't get hearsay in the record. You received a message and then you did what? Went where, rather?

A. I went to the county jail.

Q. All right, sir, now, tell us what you saw and did and what happened in your presence when you arrived at the county jail.

A. Prior to going to the jail I gave instructions to my office to call the city police department, Florida highway patrol and all of our men and have them go directly to the jail, that I would meet them there. Some of the officers were there when I arrived. I drove in, parked, and there were a large group of Negro persons on the driveway nearest the jail on the embankment between that driveway and the parking area and on the sidewalk adjacent to the upper level parking area. There were quite a number of both Negro males and females. I immediately went into the jail to make an inquiry to see if anyone had come into the jail or if everything was in order in the jail. No disturbance inside. I gave instructions to my jailers and deputies at that time who were inside, what I wanted them to do. I then came outside and talked with a number of the officers, plac-

[fol. 47] ing them at different points that I wanted them.

This group of persons that were there were singing, chanting at different times, and this went on possibly for, I don't know, five or ten minutes maybe, about that time. I recognized a number of these people, two in particular, that were sitting on the driveway right at the support that holds up the portecochere. I recognized these two persons as being student leaders.

Mr. Simon: I object to that as being a conclusion of the witness.

The Court: He recognized them as student leaders. The objection is overruled. They're people that you knew of your own knowledge?

A. They're people I knew of my own knowledge and what I had seen in the past, they were student leaders. I recognized these two people as student leaders.

By Mr. Strickland:

Q. What were their names?

A. One of them was Alton White and the other boy, his last name is Blue. I don't know his first name. The only thing I ever heard him called is Blue.

Q. State whether or not he is one of the defendants here in court this morning.

A. Blue is, yes.

[fol. 48] Q. You have seen him here this morning and identified him as being the Blue that you referred to?

A. Yes, sir.

Q. State whether or not you had a conversation with those two people at that time.

A. I did. I went up, called Alton by his first name. Alton was sitting on the pavement generally facing west. Blue was sitting on the pavement leaning up against the north support of the portecochere generally facing east.

Q. Let me interrupt you, please, and ask you to point out on the sketch where they were and; while you're there, also point out where the rest of the group of people were at that time.

A. This is the portecochere here for driving under for cars going in letting the prisoners in and out. Generally, and I think there's a little overhang here, there is a round post that supports that building there and another one there. Alton was sitting about in this position here. Blue was up against this post here. Now, the others were generally from this position here, a large group of them. These are steps. This is a parking area. This is a sidewalk here and a step right along here goes down. This is an elevated [fol. 49] area about four or five feet that goes to this parking area. They were all along this bank on the sidewalk and generally in about that area. There's a large tree here. They were on up to this tree. This is the entrance into the jail; a little stoop here and a door that comes into the jail. This is the general area of these people. This was Alton White and Blue sitting here. I walked to this position right between them. They were sitting down on the ground. I leaned over, talked to Alton this way and Blue was right here.

Q. State what the conversation was at that time between yourself and Alton White and the defendant Blue.

Mr. Simon: To which I respectfully object, if Your Honor please, on the grounds that Alton White is not a defendant before this court. The defendant Blue is before this court but any testimony taken or any conversation with the defendant Blue would be hearsay so far as the other 31 defendants would be concerned and I regard that such testimony would be inadmissible as against them and would be prejudicial if the testimony of one person could be heard by the jury insofar as the other 31 should be concerned.

The Court: If I should follow that rule of argument, no conversation with any defendant would be admissible be- [fol. 50] cause there are more than one; but I do not believe that's the law. The witness may testify in regard to any conversation that he had with the defendant Blue and you gentlemen are directed to consider it only as to him unless it was in the presence of some other of these defendants.

Mr. Simon: I appreciate Your Honor's explanation and I'm sure that that satisfies the requirements of the law. I am with you. I would appreciate it if Your Honor would relate to the jury what it means to be binding on one and not on the other under this charge.

The Court: The law requires, as I understand it, that a conversation between the sheriff and a third party would not be admissible into evidence unless it was with the defendant, himself, or in his presence and so his conversation could only be considered by you as to the defendant Blue and any other defendant who was present at that time.

Mr. Simon: Thank you, Your Honor.

By Mr. Strickland:

Q. First let me ask this. This conversation that you had at that particular moment with Alton White and the defendant Blue was not heard by the other group of people, was it?

[fol. 51] A. It could have been heard by a number of them but who they were, I could not say.

Q. But not by all of them?

A. It could not have been heard by all of them, no.

Q. Now, tell us what that conversation was.

A. I asked these boys if they would get with the group that was there with them and ask them to leave the property. I told them that if they did not leave the jail property, that they were subject to be arrested for refusing to obey a lawful order, that they were trespassing and that I was asking them to get with the group to ask the group to leave. The results were that they did not make an effort. Blue did not make an effort to disperse the group.

Q. Do you recall what Alton White said within the hearing of the defendant Blue at that time?

A. Yes.

Mr. Simon: I object, Your Honor. This is taking hearsay one step more than—

The Court: If it was a remark made in the presence of the defendant, it would be admissible. I overrule the objection.

A. Alton said, "Sheriff, we came here to be arrested and we're not going to leave without being arrested". I told him that their arrest would not do anyone any good. I asked [fol. 52] him again to talk to this group and he looked at Blue and Blue shook his head, said, "No, we're not leaving. We're going to stay here". I said, "I'm going to give you boys about ten minutes to discuss it between yourselves and if at that time you have not left, I am going to have to take action". I stepped back from the position that I was in towards the steps and waited eight to ten minutes. I then announced to the entire group loudly and clearly that they were in violation of the law, that they were subject to arrest and if they did not disperse and leave the jail, that it would be necessary for me to place them under arrest. At that time some of them were standing. They then sat down. Some remained standing. Not all sat down. There was some in the parking area that turned around and walked off. There were three adults standing between two cars in the parking area and I asked an officer to walk up to them and ask them if they were in this group or if they were on official business and the officer went to them at my direction.

Mr. Simon: I object to any conversation.
The Court: Objection sustained as to any conversation.

By Mr. Strickland:

[fol. 53] Q. Just state whether or not those three people left.

Mr. Simon: Well, I regard that as immaterial and irrelevant unless these people are before this court.
The Court: Objection overruled.

A. I directed this officer, as I stated, to find out if they were with this group or if they were there on other business and if they were not with this group or on other business,

to please leave until we got the jail under a situation where they could come in. These three people turned around and left. I also told this group that if they offered resistance in any form or manner if I placed them under arrest, that there would be an additional charge of resisting arrest placed against those so resisting. I waited another just a minute or two. They made no effort whatsoever to leave. I then announced to them that each one of them was placed under arrest and I instructed the officer to surround the group that was there and to take them in custody. At this time there was a lot of noise started about "we came here to be arrested. That's what we wanted", and Blue and White both stood up, got up from the ground and stood up and said, White, "No resistance, no violence of any kind. We'll march in". And they hushed immediately. We [fol. 54] marched them into the basement of the jail.

Q. Did I understand you to say a minute ago that there were a number of people other than the particular three that you mentioned who did leave?

A. There were others standing in the parking area on the back of this particular concerted group there. They were standing in the parking area closer back to the street. There were some on the sidewalk, as far as that goes, standing on the sidewalk that apparently were just onlookers. They dispersed and left when I made the announcement I did to the group.

Q. Were any of those people arrested?

A. They were not.

Q. Was anybody who made any effort to turn and leave arrested?

A. There was not.

Q. How many people were arrested at that time?

A. I believe there were 107. I'm not sure. The record would reflect that. They were all booked and timed and charged at the same time. I believe there was 107. I had two counts at the time. One person counted 96 and one counted 106 and later the record reflected, I believe, 107; but I had two people counting them as they were marching [fol. 55] in and I got two different counts.

Q. Would you refer to the sketch again, please, and state—

The Court: There's one thing that's not clear in my mind and I'd like to ask him one question if you don't mind. Were all of those that you arrested on the county jail property?

A. Yes, sir. They were all within the confines of the county jail property.

The Court: You said some of them were on the street out there. Were any of them arrested?

A. They were not. When I made the announcement to the entire group that those not leaving would be guilty of trespassing and asked them to disperse, all of them, there were,— In fact, there were a number of them back in this area, in the parking area. There were some on the sidewalk parallel to Gadsden Street here. There were three adult Negro females standing between some cars that were parked here. They all left but this group stayed and when I told them that they were subject and would be placed under arrest if they didn't disperse, the majority of them that were standing up set down.

By Mr. Strickland:

[fol. 56] Q. When you arrived at the jail that morning, that is, on this particular occasion that morning, what percentage of the width of the entrance driveway, that is, the driveway for motor vehicle purposes, was blocked by these people?

Mr. Simon: I object, if Your Honor please, on the grounds that it's a leading question and calls for a conclusion of the witness.

The Court: Will you repeat your question? What per cent of the—

Mr. Strickland: Of the width of the motor vehicle driveway was blocked by these people.

The Court: You're assuming that part of it was blocked so I'm going to hold that that is a leading question.

Mr. Strickland: Very well.

Q. When you arrived at that time at the jail, what was the circumstance concerning the motor vehicle entrance driveway?

A. When I arrived under the portecochere, the group was in the driveway possibly two to three feet inside of the post that would be taking up maybe a third or a little more of the portion of the driveway. Now, there was some fluctuation of that. They weren't just standing there. There was [fol. 57] some fluctuation moving forward and backward. As a matter of fact, I asked them at one time to move back and they generally went along with that. Now, I was not outside the entire time. I had some business inside and out of the jail. I do know that at one time I looked up as they started back toward the jail and the officers got them back over to where it's indicated there where they finally settled down and inside the portecochere and the fence and Blue and White, I mean Blue and Alton, yeah, were generally the closest ones to the jail. It would have used up at least a third of the driveway.

Q. At the time that you found out what was going on at the jail that morning, state whether or not you had some deputies who were off duty.

A. Oh, yes.

Q. And what did you do concerning those off-duty officers?

A. Well, as I stated originally, as soon as I got the call that I got, I instructed my officers to call all the deputies on duty, also the police and the highway patrol, to send officers to the jail. I had all of my men called out.

Q. How many deputies did you have on the 16th of September approximately?

[fol. 58] A. You mean total deputies?

Q. No, field men; you know, the deputies in the type of work who would go to a scene such as this?

A. Well, I had some of my jailers and some of my office deputies also go down other than the field men that I had. I had about 16 or 17 of my deputies down there. I don't know just how many police officers and highway patrolmen

were sent from each department but I'd say that there were between 30 and 40 officers total.

Q. That included deputy sheriffs, highway patrolmen and city police officers?

A. City police officers.

Q. Now, state whether at this time you had deputies who were on a particular assignment at other places who were re-assigned to the Leon County Jail.

A. As I stated a moment ago, I had to take some of my office deputies from their work there and I don't know just what other assignments these officers had. I just gave an order to my dispatchers to have all of the deputies sent to the jail and I don't know what each officer was assigned to or what he was doing at the time but they were all taken from what they were doing and sent down there.

Mr. Strickland: No further questions.

[fol. 59] Cross examination.

By Mr. Simon:

* * * * * * *

Q. Sheriff, you testified that when you received a call from the jail on Monday morning, September 16, you were in session or talking with a circuit judge and a number of attorneys?

A. Correct.

Q. You were discussing the case, were you not?

A. That is correct.

Q. The name of that case was Tallahassee State Theatres, Inc. vs. Due.

A. Along with me and several others that were sued. It was a contempt of court charge.

[fol. 60] Q. Well, that's the case you were discussing?

A. Correct.

Q. And that arose out of a demonstration?

A. That is correct.

Q. And the demonstration at your jail was connected with that matter, was it not?

A. I would assume possibly it was in protest of what had been done.

Q. And you knew it was a protest of what had been done?

A. I assumed that it was, yes.

Q. You have never found any reason to learn to the contrary, have you?

A. No, I have not.

Q. Now, you stated when you came to the jail, you drove in?

A. That's correct.

Q. Where did you park your car?

A. I parked my car in the first parking place on the right turning south off of Gaines Street into the parking area nearest the jail.

Q. Did you drive into that entrance-way?

A. Yes, I did.

Q. Run over anybody?

A. No, I didn't.

Q. Anybody try to block your car?

[fol. 61] A. Not at all.

Q. Do you know of a single tradesman that couldn't get into the jail that morning?

A. He could have got in as far as I did.

Q. Now, here is the sidewalk on Gadsden, is it not?

A. I assume that was Gadsden Street. The sidewalk would run parallel to it.

Q. Up here. Where I have just marked in broad chalk, is that the sidewalk on Gadsden Street?

A. Yes.

Q. When you came there, were there any people standing on that sidewalk?

A. I frankly didn't notice that sidewalk when I first drove up. What I had my attention on was the jail entrance. That's what I was interested in, to see if anyone had gotten into the jail. Gaines Street into this entrance, we have a parking lot, parking spaces that come along here. We have parking spaces in here and when I pulled in, I parked in this first parking area here.

Q. Now, at the time of the arrest were there any persons on the sidewalk?

A. Now, are you speaking about the sidewalk along Gaines Street?

[fol. 62] Q. On Gaines or Gadsden?

A. I mean on Gadsden Street?

Q. Either one?

A. There were some persons standing out on the sidewalk or on the grass by the sidewalk. I couldn't tell just where they were standing. This is elevated from where I was standing but there were persons standing out there, a few.

Q. Did you order them to disperse?

A. I ordered the entire,— I spoke to this group that was on the jail property and these people, I wasn't speaking to them. They were not on the jail property but they did leave when they heard what I said, with the exception of the three people that I said were adult females and I later found out they were there for business. In fact, they were waiting there and they dispersed when I dispatched an officer to find out if they were part of this group. I don't think they realized what was going on.

Q. You did not make any arrest of any person on the sidewalk?

A. I did not.

Q. You're quite certain that all the persons were arrested were on the jail grounds?

[fol. 63] A. Definitely because prior to arresting them, after I had told them they were placed under arrest, the officers that were there were sent from the sides in front of the jail to encompass the entire group. That would be the officers that were standing along this area here. Then when the arrest was made, they come around this area here and only those within that circle was taken.

Q. The others were allowed to stay?

A. They left but none of this group left or could leave after I placed them under arrest and no one else joined them.

Q. Now, I believe that your testimony was that you had conversation with Alton and Blue.

A. That is correct.

Q. And they were sitting on the ground?

A. Along with others.

Q. And you leaned down like this to talk to them and you talked to them in regular conversational tone?

A. Normal tone of voice, yes.

Q. So that the people on the outskirts of this group couldn't hear what you said?

A. Could not have but those within, oh, four or five or six,— Now they were all sitting there like this. There were [fol. 64] a number of them definitely could have heard it but I don't know who they were.

Q. So you're not disputing the proposition that a number of them could have heard it?

A. Oh, no. Oh, no, absolutely not.

Q. You want to be fair about this.

A. That's right.

Q. And I think you said you said to Alton and Blue, "I'll give you ten minutes to leave".

A. Yes. I told them that after I asked them to talk with this group and tell them what law they were in violation of and ask them to ask the group to disperse and then I told them I would give them ten minutes to discuss it, talk it over and talk to this group.

Q. And then you said Alton and Blue did not discuss it.

A. They talked amongst themselves there a little bit. I had stepped back. They talked amongst themselves just a little bit. I did not hear what they said.

Q. All right. When you told them, "I'm going to give you ten minutes to leave", you said that at the same time and in the same manner that you told them to please discuss it?

A. That is correct.

Q. So that some of the people heard you say, "I'll give [fol. 65] you ten minutes to leave"?

A. Anyone that heard that would have heard the entire conversation.

Q. And anyone who didn't hear the entire conversation wouldn't have heard that?

A. That's correct.

Q. Then I believe you said you waited ten minutes—

A. Eight to ten minutes.

Q. And then you announced to the entire group, I think this is what you said as I made notes on it, "I announced to the entire group loudly and clearly that they ought to disperse". Is that correct?

A. That they were trespassing and if they did not disperse, that they were in violation of trespass and refusing to obey a lawful order.

Q. And you also told them at that time that any resistance to arrest would constitute an additional charge against them?

A. Those so resisting.

Q. You told them all of that at the same time?

A. I did.

Q. You said that in a loud clear voice?

A. I did.

Q. Now, in fairness, was it your opinion that everybody [fol. 66] on the jail grounds heard that command?

A. I said it very clearly and loudly. I am positive they heard it.

Q. I would not dispute your statement on it because I don't know. Then I believe you said you waited one minute or two minutes before you announced, "Everybody here is under arrest".

A. It was just a minute or two or three. In other words, as I stated before,—

Q. Well, now, Sheriff, I don't mean to interrupt but you didn't say a minute or two or three when you were testifying on direct. Now, do you plan to change your testimony? Was it a minute or two or more?

A. Well, it was a minute or two or three if that's the way it goes but I then stepped back at the time I told the group there, those that were standing up, most of them sat down and I realized that there was not going to be any intention of them moving. Then I had the officers get

around behind them and then placed them under arrest; then it only took just a minute or two for the officers to leave their position and close around them.

Q. So then it's your testimony that it was, at the most, four minutes between the time of your general announce-[fol. 67] ment and the time of the surrounding of these people and their arrest?

A. Approximately that, yes. I wasn't watching my watch to the extent of that when they were placed under arrest. They were placed under arrest as a group. That don't mean that in four minutes they were all in the jail. It don't mean—

Q. No, but you and I know that being under arrest means you're under arrest subject to being jailed. Right? When an officer says you're under arrest, that's it.

A. That is correct.

Q. Being jailed is just a necessary step but expected.

A. Well, I just didn't want any confusion as far as the jury is concerned.

Q. I am very much in accord with that proclamation. Now, we all agree that so far as the bunch of these people were concerned, your order to disperse was followed by arrest within four minutes. Now, some of them may have heard your first order about ten minutes. Right? So will you admit that some of them didn't hear it and as for those who didn't hear it, those on the outskirts of this crowd or back a few rows, you only gave them a minute or two. Isn't that right?

A. I didn't give them very long. As I say, when I made [fol. 68] this announcement and they started sitting down, I realized what their answer was.

Q. But only some of them sat down.

A. Majority of them, I said. You'll find that in the record.

Q. Now, do you know whether any of these people sat down or stood up?

A. That, I could not say; I could not.

Q. Do you know whether these people were in the front or the back?

A. I couldn't say that.

Q. Sheriff, you have been a peace officer for ten years?

A. Twenty-three years.

Q. Well, I'm sorry. I apologize. That's a very commendable record but you testified you were sheriff ten years. That's what I—

A. That's correct.

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[fol. 69] Re-direct examination.

By Mr. Strickland:

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Q. You were asked the question on cross examination if, —I forget whether it was a question or the answer that included the statement that there were people in the Leon County Jail at that time under contempt of court. Now, the duties that you had performed, that is, the action you had taken up to that time in connection with those people, [fol. 70] was that or was it not under an order of the Circuit Court?

Mr. Simon: To which I respectfully object on the ground that that is not anything that was brought out on cross examination.

The Court: Objection overruled.

A. I had a number of people in jail. Some of them were results of this Circuit Court action. Some of them that were arrested under this Circuit Court action wasn't even in the jail. They were at the county road camp or out at the fairgrounds. I don't know whether they were in jail or not.

By Mr. Strickland:

Q. Let me finish my question now. Defense counsel mentioned a certain demonstration, I think. Now, the prisoners that you had in the Leon County Jail at that time concerning that demonstration, those are the only prisoners I'm

asking you about. State whether or not you had custody of those prisoners under a Circuit Court order.

A. I did but I don't think they were in the jail. Now, they were in custody but I don't think they were in the Leon County Jail when this group come down. I think they had been moved to other quarters and were not even in the county jail. The only prisoners that were in the county jail [fol. 71] were prisoners that were in there for crimes.

Q. Now, whether they were in the jail building, itself, or in the county fairgrounds building, did you have custody of those people just because you decided to do it or did you have custody of them under a Circuit Court order?

A. Under a Circuit Court order.

* * * * * * *

[fol. 72] JACK DAWKINS was called as witness in behalf of the State and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Strickland:

Q. State your name.

A. Jack Dawkins.

Q. Your occupation?

A. Deputy Sheriff, Leon County, Florida.

Q. How long have you been a deputy sheriff?

A. Since January 6, 1953.

Q. How long had you been a law enforcement officer prior to that time?

A. I was with the Tallahassee Police Department for approximately two years.

[fol. 73] Q. Does that make about eleven or so years of continuous law enforcement experience?

A. A little more than that, yes, sir.

Q. Were you a deputy Sheriff of Leon County on September 16, 1963?

A. I was, yes, sir.

Q. And early on the morning of that date did you have occasion to go to the Leon County Jail?

A. I did.

Q. Approximately what time, just roughly?

A. Probably between 9:30 and 10:00.

Q. When you arrived at the jail building, what did you see at the front door and on the jail grounds?

A. There was a large group of colored men and women gathered partially under the roof overhang there at the entrance to the jail and there was some officers present there standing between them and the doorway to the jail.

Q. What was this group of people doing?

A. Well, at the time we drove up, they were singing.

Q. Now, start at the time that you arrived and got out of your car and tell what you saw and did and heard.

A. I drove in right behind Sheriff Joyce, parked and got out of my car and walked down to the jail entrance. This [fol. 74] group was gathered out under the edge of the roof overhang there and up cnto the bank and stairway leading up into the second level of the parking lot there. I stood around the entrance there for some few minutes and they were talking loud among themselves. Do you want me to say what I recall the discussion seemed to be about, their oral discussion?

Q. By the defendants?

A. Yes.

Q. Yes.

Mr. Simon: Pardon me, sir. If your Honor please, I have no objection if the witness can identify which of the defendants were saying this.

Mr. Strickland: Let me correct that, then, Your Honor, and just say by some members of that group.

Mr. Simon: Well, do I take it that he can't identify the defendants by saying this?

The Court: It will be necessary, for this conversation to be admissible, for you to be able to swear under oath that

it was in the presence of these defendants or certain ones of them.

By Mr. Strickland:

Q. Do you know of your own knowledge that the statements that you were about to testify to were made in the [fol. 75] presence of these defendants?

A. Yes, sir.

Q. What did you hear?

Mr. Simon: Now, I can't accept a conclusion, Your Honor. If I could examine the witness in a preliminary manner to see—

The Court: Before he answers it, you may ask him a question or two.

By Mr. Simon:

Q. Can you tell me, sir, which of the defendants you were standing next to and overheard these conversations?

A. I was standing between the group and the entrance to the jail and the discussion was from this group.

The Court: Was it loud enough that all of them could have heard it?

A. Yes, sir.

By Mr. Simon:

Q. Loud enough that all two hundred of them could have heard it?

A. It was loud enough, I think, for all of them to hear it. They were all in this group together there.

Q. All two hundred people?

A. Two hundred? I don't know that there was two hundred there.

Q. Well, can you show the court and jury which of the [fol. 76] defendants sitting in this courtroom heard this

conversation, if any, under oath? There they are, sir. They're right there.

A. If I may explain how I can identify them?

The Court: Yes, you may explain.

A. When the group was placed under arrest, they were marched into the jail basement. They were then booked, fingerprinted and photographed. I have those photographs and fingerprints available for identification.

Mr. Simon: I submit, Your Honor, that the witness may not be aware of the fact that there are thirty defendants and that there were 107 people arrested according to previous testimony. I submit that any conversation not in the presence of these defendants, as I think Your Honor has already ruled, is not admissible.

The Court: I think I have ruled and I believe the witness understands that the remarks which you are about to testify to, if they were made loud enough, if they were in the presence of all of these defendants, then they may be used for or against all of them. If it was just in the presence of certain ones, you'd have to identify which ones it was.

A. All of these present were in the group that was ar- [fol. 77] rested and placed in jail there at that time. I can't point each one of them out and call his name.

The Court: Were the remarks, that were made, sufficiently loud that it was in the presence of all of these parties here or just in the presence of certain ones?

A. It was loud enough for me to hear it up around the front door and they were in a group, gathered much closer. They should have been able to hear anything that was said.

By Mr. Strickland:

Q. Now, getting to this point so that it won't be lost, the statements that you were about to testify to were made generally speaking by whom?

A. By the group.

Q. The group which included these defendants?

A. Yes, sir.

Q. Now, what did you hear?

A. They were wanting to go to jail and appeared to be directing their remarks to their leader, group leader, that they had come to the jail the night before, had promised that they could go to jail and they were refused and they had come back this morning, this particular morning, to go to jail and now they was demanding to go to jail. They [fol. 78] wanted to go to jail. And they started toward the entrance to the jail and myself and several officers stepped in, in between and blocked them and at that time one of the ministers, Reverend Evans, came up and talked to the group leaders and asked them to move back.

Mr. Simon: I object, if Your Honor please, on the grounds of hearsay.

The Court: Was his remark made sufficiently loud that the entire group could hear or was he just talking to the group leader?

A. He was talking to the entire group.

The Court: The entire group?

A. Yes, sir.

Mr. Simon: This man isn't present. I can't cross examine what the man said about the situation.

The Court: It wouldn't be hearsay if it was made in the presence of the defendants, though, in my opinion; so I rule it's admissible if it was made in the presence of these defendants.

Mr. Simon: Thank you, Your Honor.

By Mr. Strickland:

Q. Will you identify the person you mentioned again?

A. Reverend Evans.

[fol. 79] Q. Go ahead. What did he say?

A. He asked them to stop. He said, "You can't arrest yourselves. They'll have to arrest you". Said, "You all stay where you are and don't try to go in the jail", and they did stop. Then shortly after that the sheriff sent me inside the jail to get the gas gun and stay inside the jail in case they did try to force their way in, they could be stopped.

Q. I believe you said the sheriff sent you inside for that purpose. What did you do inside the jail at that time?

A. I got the gas gun and gas shells and grenades and stayed inside the door there.

Q. Which door was that?

A. That's the door going into the lobby of the jail.

Q. Referring to this sketch on the board, can you identify which door it was that you were standing immediately inside of with the gas gun?

A. Where the "X" is marked is the entrance that goes up into the jail. There's also a stairway goes down to the basement. It was up in the inside of the door that goes into the jail lobby.

Q. In other words, this was the main front door of the county jail?

[fol. 80] A. Yes, sir.

Q. State whether or not there were any vehicles in the entrance driveway of the jail at that time.

A. Any vehicles in the entrance driveway. Can I step up there and point out the parking arrangement?

Q. Yes.

A. The driveway comes in here and goes on through the overhang by the front entrance and out back into this street here. There's angle parking along this area of the overhang. There was cars parked, two or three right along in here, the sheriff's, my own and some other cars back closer to the street. There was a service truck from Eli Witt Tobacco Company parked in here servicing the jail. There

were other cars parked in this lot up here, parked at angles with the drive running through the middle.

Q. You referred to a service truck. Now, would you make a mark on the board to show the position of that service truck?

A. Parked roughly in this manner.

Q. What kind of service truck was this?

A. It was Eli Witt Tobacco Company's panel pick-up and delivery truck. They call on the jail regularly.

Q. Was this truck owned by the Sheriff's office or the [fol. 81] County of Leon?

A. No, sir.

Q. What was the purpose of the truck being there at that time?

A. The driver of the truck was servicing the jail as a customer.

Q. And when you arrived that morning, where was the driver of that truck?

A. When I went into the jail, he was inside the lobby of the jail.

Q. Where was this group of people in relation to the four sides of that truck?

A. Well, they were standing around it leaning on it and some of them were sitting down back of it.

Q. Do you know of your own knowledge whether the driver of that truck finished his duty in the jail and was ready to leave while the group was still outside?

A. Yes, sir, I do.

Q. Did he leave or attempt to leave?

A. He came to the door to leave and then did not leave.

Q. What are the offices that are in the building on the south side of the jail ground there?

A. At that time the Juvenile Court had offices there and I believe the district office of the State Welfare Department [fol. 82] was there.

Q. Do you know whether or not people employed at those offices were there that morning?

A. Yes, sir.

Q. Now, the Juvenile Court offices you're referring to, state whether or not that was a detention cell or a business office.

A. It's a business office.

* * * * * * *

[fol. 83] Mr. Strickland: Your Honor, the State rests.

Mr. Simon: May we request the jury be excused?

The Court: Let the jury be excused.

(Jury retires)

The Court: The Court will be at ease.

DEFENDANTS' MOTION FOR A DIRECTED VERDICT AND DENIAL THEREOF

Mr. Simon: If it please the Court, at this time the defendants respectfully move for the entry of a directed verdict in favor of the defendants and in support thereof we urge and reiterate each and every of the grounds set forth in the motion to quash except the ones set forth in paragraph 7 thereof which has been withdrawn and for further grounds we wish to suggest to the Court that the State has failed to prove even a prima facie case on a number of particular elements which are indispensable to their proof. The State, first of all, failed to prove that the possession or the title of the lands upon which the trespass is alleged [fol. 84] to have occurred.

(Argument of counsel)

The Court: I'm inclined to think the Supreme Court case to which you refer would have little or no application in this case because I was only in the short time I had there able to read the synopsis of it that was given at the top of it but it indicated to me that this was on a public street and that the charge was disturbing the peace and here we have a charge that it was a trespass charge upon the property of another where disturbing the peace would have no

part in this charge except inasmuch as it might tend to show malicious, mischievous intent. Of course, none of us know what's in the minds of our legislators when they pass these laws but after they passed all these other trespass laws, they came along and said a trespass upon State land is prohibited and any person found guilty of such trespass would be deemed guilty of and punished for a misdemeanor; and if you'll note in that statute, it left out the malicious and mischievous intent. In other words, they made it so strong that if you just trespass upon State property, you don't even have to prove anything except just that they trespassed on it; and so I think that was the purpose in [fol. 85] that statute so far as I could determine because it comes along at the end of the other trespass statutes and apparently 821.18 was a catch-all statute in which every other trespass, it says. Of course, before that they had trespass as accepting timber and picking vegetables and entering fruit trees, box timber and different things and it says all the trespasses would come under 821.18 and then apparently some years later, because 821.18 was passed in 1892; so it was some years later, in 1933, that they came in with this trespass law upon State lands which they didn't even require that a malicious and mischievous intent be shown. I feel that the State has made out a prima facie case and most of the questions that have been raised here are questions of fact for the jury so I'm, therefore, denying the motion. Will you call back the—

Mr. Strickland: If the Court please, before the jury is called back, I'd like to raise another question of law. I'm not aware of whether the Court has made a ruling on the motion to quash.

The Court: I denied the motion to quash at the beginning of the case and also, I believe it was renewed at another point.

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[fol. 86] NORMA WALLS was called as a witness and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Norma, I know this is kind of a unique experience for you so when when I ask you a question and you give me an answer, I want you to give it out in a big, bold voice. I'd like to hear it all the way back here. If I can hear it, then the last gentleman on the end, he can also hear it. That's the important thing. Now, will you tell the Court your full name?

A. Norma Alfreda Walls.

Q. And what's your address?

A. 1540 South Adams Street.

Q. What is your occupation?

A. Student at Florida A. & M. University.

Q. Now, Norma, I'm going to go a bit into your background. Where were you born?

A. I was born in Tallahassee, Florida.

Q. And have you lived here from the moment you were born until the present time?

A. Yes, I have.

Q. Did you attend the public schools of this county?

[fol. 87] A. Yes, I have.

Q. And that includes the grade schools and the high schools?

A. Yes.

Q. And then you now attend Florida A. & M. University in this very city?

A. I do.

Q. What were some of the courses that you studied along the way in grade school, high school and college?

A. Civics and history and I'm taking a government course now.

Q. And during the course of your studies did they acquaint you with the history of the United States and

acquaint you with the Constitution and the Declaration of Independence and the other great documents of our Country?

A. They did.

Q. You studied these while you were in school?

A. Yes.

Q. Now, on the 16th day of September of 1963 were you caused to be arrested in front of the Leon County Jail by the Sheriff of Leon County?

A. I was.

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[fol. 88] Q. Norma, were you aware of the demonstrations that had been going on in this town with regard to the picketing of the theatres?

A. Yes, I was.

Q. And were you aware of the arrest of certain of the students at Florida A. & M. University for those activities?

A. Yes, I was.

Q. Now, on Sunday, which I believe would be September 15, 1963, did certain students, including yourself, gather on the campus or gather somewhere in this city for the purpose of discussing this problem?

A. Yes.

Q. Would you tell us what happened at that gathering?

A. Well, only facts were brought about previous dem-

[fol. 89] onstrations and as a result of that I feel like most of us went down because of the things that we learned from the previous demonstrations and brutality that was administered to the girls as a result of them.

Q. Did you go to this gathering voluntarily?

A. Yes, I did.

Q. No one forced you to do it?

A. No, I was my own leader.

Q. It was out of your own conviction that you wanted to go?

A. Yes, and out of the protest of a segregated jail as well as the theatres and other public facilities.

Q. Now, the following day where did the group that eventually ended up at the Leon County Jail first gather?

A. We gathered at A. & M. Campus.

Q. And about how many were present at the time?

A. Approximately 250.

Q. And how did you go from the A. & M. campus down to the Leon County Jail? Before you answer that, tell me, if you know, the approximate distance you think that is.

A. Oh, it's about a mile from the jail to the University.

Q. How did you get there?

A. We walked in a peaceful group.

[fol. 90] Q. You walked. All 250 of you?

Yes.

Q. Did you walk on the sidewalk or in the street?

A. We walked on the sidewalks.

Q. I see. Was there any attempt made to interfere with your walking through the town to the jail?

A. No, there wasn't any interference at that point.

Q. Was there any boisterousness in the crowd?

A. No, it was an orderly group.

Q. Was it relatively quiet, not disturbing people on the way?

A. Yes; it was.

Q. Did you see among the people in that crowd any weapons?

A. No.

Q. There were no bats, no knives, blackjacks or anything of that sort?

A. No, there wasn't.

Q. Of your own personal knowledge do you know whether anybody may have had them hidden on their person?

A. No.

Q. Did you have any?

A. No, I didn't.

Q. Now, about what time did you leave the A. & M. Campus?

A. About 9:00 o'clock; between 9:00 and 9:15.

[fol. 91] Q. And how long did it take you to get from A. & M. to the jail?

A. I'd say approximately between 9:30 and 10:00 o'clock.

Q. 9:30 and 10:00 o'clock roughly. You weren't watching your watch?

A. Yes.

Q. Now, when you got to the jailhouse, where did the demonstrators line up? You can refer to that diagram up there. You don't have to get up. You can just tell us by description. About where did you first line up when you got up there?

A. Well, I think we lined at,— What street is this running—

Q. Gaines.

A. We were at the corner of Gaines and Gadsden and then made a right and went down Gadsden up to the left and then went on the grassy portion of the county jail.

Q. Did you go up a little further than the grass?

A. Yes.

Q. Now, tell us where that grass is.

A. Well, the grassy section is in this area.

Q. I see. Did any of you go up a little further than that, closer to the building?

A. Well, first we traveled the roadway and that's the [fol. 92] driveway and then we all ended up on the grassy section out of the way of the cars because there were cars parked there.

Q. Did an officer come out and request that you step back a little towards Gadsden Avenue?

A. Yes.

Q. And did you do so?

A. We did.

Q. You did so. Was there any protest against doing that?

A. No, there wasn't.

Q. You dropped back peacefully?

A. Yes.

Q. Now, about where on that diagram did you station yourself? Did you stay in one spot or did you move around?

A. Well, I was stationed in the front portion near the rim of the border line, the cement border of the grass.

Q. That would be about where? Show us on the diagram.

A. Well, as I said, this is the driveway and then there's a grassy portion and there's a cement rim around the grassy portion, I think, and I was stationed directly behind that cement block or that line.

Q. Were some of the students that you noticed on the roadway there?

A. No, I didn't notice any students on the roadway. They [fol. 93] were across the street on the sidewalk somewhere in the vicinity but not on the roadway.

Q. Did you notice any vehicles that attempted to go into that roadway that couldn't make it and either turned around or just stopped because they couldn't get in towards the jail?

A. Oh, no, there were none that attempted it and couldn't make it, no.

Q. I see. Did you have any intent to interfere with any vehicles that might go up to the jail?

A. No, that wasn't our purpose there.

Q. Do you know of your own knowledge whether anybody else had an intent to interfere with vehicles loading or unloading or doing other business at the jail?

A. No. We went strictly in protest of segregated facilities and other things.

Q. Now, what was the total time that you stayed in the jailhouse area before the arrest was made, if you recall?

A. Would you repeat that, please?

Q. Yes. From the time you got there, how long was it before the Sheriff finally arrested you?

A. Oh, I'd say about quarter to ten or 10:00 o'clock.

Q. In other words, it was a total of about a half hour or [fol. 94] so that you were there demonstrating before the final arrest was made?

A. Yes, that's correct.

Q. And during that time did you or any of the people that you saw or heard, evince any outward intent to storm the jailhouse?

A. No, we didn't go there with any intent of violating any laws.

Q. What was your intent of going there?

A. Our intent was going there to protest the segregated facilities and the brutality that was administered to the helpless girls and unarmed girls on the demonstration of Saturday. I think that was September 14.

Q. In your own mind did you feel that you had a right to go there and make this protest?

A. I certainly did. In fact, that's exactly why I went.

Q. Did you go there with the intent of damaging the property, the county property?

A. As I said before, I went there with no intent of violating any laws, only in protest.

Q. While you were in the course of the demonstration, did you hear any bad language used by any of the demonstrators?

A. No, there was none.

Q. Nothing that would be off-color?

[fol. 95] A. No such language was used.

Q. Nothing of that sort?

A. No profanity was used.

Q. Are you familiar with the figure of the Sheriff of this county, who he is?

A. Yes, I know Sheriff Joyce.

Q. You would recognize him?

A. Yes, I would.

Q. Did you see him at the demonstration?

A. Yes, he was there.

Q. About how long after the demonstration started at the jailhouse did the Sheriff arrive?

A. Oh, I'd say about 9:30 or something in that vicinty.

Q. 9:30?

A. Approximately 9:30.

Q. And did you see him as soon as he arrived?

A. Yes, we did.

Q. You spotted him?

A. Yes.

Q. And what was the first thing he did?

A. Well, he came out and stood around a while and he instructed his officers and deputies and other people that were around—

Q. Did you hear what they said?

[fol. 96] A. No, I didn't.

Q. You just saw him standing there talking?

A. Yes.

Q. And about how long did he stand there and talk to his deputies and the other officers?

A. Oh, for about a half hour, which would make it about 10:00 o'clock, I think.

Q. I see. And then after he finished instructing or talking or whatever he was doing next to the officers, what did he do after that?

A. He came over and talked to two of the young men who were in front of the line, on the border line along with me.

Q. They were near you?

A. Yes, they were.

Q. They were near you. And after he spoke to them, then what did he do?

A. Well, he stood for a while, about ten minutes, I imagine, and then he repeated to the group loudly and clearly that we should disperse in about five minutes and those remaining on the premises of the county property would all be jailed or arrested.

Q. When he was talking to these two fellows who were fairly close to you, you were stationed right nearby them, [fol. 97] what kind of a voice was he using? Was he using conversational or shouting so that a lot of people would hear?

A. It was a conversational voice because I was nearby and I couldn't hear him.

Q. Oh, you couldn't hear exactly what he said?

A. No. I heard the murmurs but the conversation, I couldn't hear at all.

Q. In other words, the crowd that was nearby, you couldn't hear at all. What did he tell the group when he finally addressed the group?

A. Well, he asked us to disperse within five minutes and if we didn't, we would be arrested.

Q. When he was saying this, where were the Sheriff's deputies and the other police officers?

A. Oh, they were,— Shall I show you by diagram?

Q. Yes.

A. The grass area was located here. Here's a parking lot in front of where the cars pass in front of the jail and the officers were surrounded so they left us in the center.

Q. In other words, you were all surrounded when he first addressed the entire group?

A. No, No, not at first. They were standing apart but as [fol. 98] he said it and after five minutes were up, they just closed in. They were already scattered apart around there.

Q. Did you see, during that five-minute interval, any of the demonstrators leave the area?

A. I saw some move across the street and some move—

Q. Across what Street?

A. Across Gadsden Street. I think there's a Health Department building there and some remained on that sidewalk and some on the other sidewalk.

Q. Which other sidewalk is that?

A. That's the sidewalk that separates Gadsden Street.

Q. I see. Now, some were on the jailhouse side of Gadsden Street and some of them were across the street?

A. Yes, some of them were across the street.

Q. On both sides of Gadsden Street. Were any of those who were on the opposite side, in other words, farthest away from the jailhouse on Gadsden Street, were any of them arrested?

A. I think a few of them were arrested. I'm not certain if it was on the sidewalk near the jail or opposite, on the side where the Unit is, the Health Unit.

Q. Were any of those on the sidewalk on the near side of [fol. 99] Gadsden Street, in other words, back where the jail is, were any of those arrested?

A. I think there were about two or three.

Q. Do you know the names of those?

A. No, I don't know the names but—

Q. You saw them brought into the group?

A. Yes.

Q. Now, did you or any of the people you observed attempt to leave the area that were stopped by the officers after the Sheriff gave his command to disperse?

A. Well, through conversation I know a few that were attempting to leave but—

Mr. Strickland: Object to conversation.

The Court: Objection sustained.

By Mr. Segor:

Q. I just have one or two more questions to ask you. You came to this demonstration in the morning and, of course, it lasted for only a short while, about a half hour before you were arrested. Did you intend to stay on that lawn indefinitely or were you there for the purpose of a demonstration to put your point across and then to leave?

A. Well, I was there for the purpose of a demonstration. However, I would have stayed as long as I felt it necessary [fol. 100] or I could have stayed.

Mr. Segor: No further questions.

Cross examination.

By Mr. Strickland:

Q. Did I understand you to say that there were about 250 in the group that marched down there on Monday the 16th?

A. That's correct, yes, there was.

Q. Were you one of the group that arrived first in front of the front door of the jail at the entrance steps?

A. No. We were on the grassy area.

Q. Did the people who were in the front of the group start to walk up the steps at the Leon County Jail front door?

A. To my knowledge, no.

Q. You don't know one way or the other, do you?

A. Well, I didn't see them.

Q. Did you hear some of the members of this group demanding to be arrested?

A. No. We went down in protest but not to be arrested.

Q. Did you carry a sign with you?

A. No, I didn't.

Q. Did any of them carry a sign that you saw?

A. No.

Q. Did you, yourself, make any statement to the Leon County Jailer who was first there or to any of the officers [fol. 101] who arrived later?

A. No, I didn't.

Q. Did you hear any of the people that were in the group make a statement to any of the officers of the exact purpose of the demonstration?

A. No, I didn't hear them.

Q. Then neither yourself nor anybody that you heard made any protest against the segregated facilities at that time, did you?

A. That was the purpose of our march.

Q. You did not do it, though, did you?

A. Literally, I don't know.

Q. You didn't do it, did you?

A. No, I didn't.

Q. And you didn't hear anybody else do it?

A. No, I didn't hear anybody else do it.

Q. Did you, yourself, make any protest about what you called the brutality administered to the girls the previous Saturday?

A. Yes. That's why I marched down, for that purpose.

Q. I mean a verbal audible protest at the jail?

A. No.

Q. And you didn't hear anybody else do so either, did you?

A. No, I didn't.

[fol. 102] Mr. Strickland: No further questions.

Mr. Segor: No questions.

PATRICIA MAYS was called as a witness in behalf of the defendants and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Will you state your full name?
A. My name is Patricia Mays.
Q. And what's your address?
A. 211 Wheatley Hall, Florida A. & M. University.
Q. And your occupation, I guess, then, is student?
A. Yes.
Q. Patricia, were you arrested at the Leon County Jail on September 16, 1963?
A. Yes, I was.
Q. And where were you standing at the time of your arrest?
A. I don't know the street name but I was standing by—
Q. Will you show it on the diagram? Now, what is that? Is that grass or sidewalk?
A. This is the sidewalk here. This is grass and this is [fol. 103] a tree and I was standing by the tree.

Mr. Segor: Right there. Okay, Patricia, that's all. Thank you.

Cross examination.

By Mr. Strickland:

* * * * * * *

Q. Did you hear the Leon County Sheriff make a statement that persons who did not leave would be arrested?
A. Yes, I did.
Q. Did you attempt to leave?
A. No.
Q. Then you stayed until you were arrested. Is that correct?

A. Yes, that's correct.

Q. Wasn't that your purpose in going there?

[fol. 104] A. No, it wasn't at all.

Q. Well, after he made the statement that those persons who stayed would be arrested, wasn't it your purpose at that time to stay so that you would be arrested?

A. No, even if I wanted to leave, I couldn't leave because I was surrounded by officers so I didn't have a choice really.

Q. What attempt did you make to leave?

A. I didn't make any attempt to leave at all.

Q. How far apart were the officers behind you along Gadsden Street?

A. I don't know.

Q. Couldn't you have walked away if you had wanted to?

A. No, I couldn't have.

Q. For what reason?

A. Because the officers was surrounding me and if I would have gone one way, I probably would have been picked up either on,— Said I was resisting arrest so I really didn't have a choice.

Q. How many officers were there surrounding you?

A. I don't know.

Q. How close was the one closest to you?

A. Oh, he was touching my arm.

Q. And how close was the next closest to you?

[fol. 105] A. I don't know.

Q. Which side was he, your left arm or your right arm?

A. It was my left arm.

Q. Couldn't you have walked off to the right if you had wanted to?

A. If I would have walked off, he probably would have gotten me and said I was trying to resist arrest so I didn't really have a choice.

Mr. Strickland: No further questions.

Mr. Segor: No questions, Your Honor.

TOMMIE WRIGHT was called as a witness in behalf of herself and the other defendants and after being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Segor:

Q. Tommie, will you tell us your name?
A. My name is Tommie Wright.
Q. And what's your address?
A. 219 Crawford Hall, Florida A. & M. University.
Q. And what's your occupation?
A. I'm a student at Florida A & M. University.
[fol. 106] Q. Tommie, were you arrested on September 16, 1963 somewhere in front of the jailhouse in Leon County?
A. Yes, I was.
Q. Show us with reference to that diagram just about where you were.
A. I was on the sidewalk just above the embankment.
Q. Just above the embankment?
A. Yes.
Q. Tommie, how close were you to Gadsden Street?
A. I was—
Q. In feet without reference to the diagram, how close in feet? Can you estimate it, give a rough guess?
A. No, I couldn't.
Q. Were you closer to Gadsden Street than Gaines Street?
A. I was probably in the center of both of them; about the same distance from both of them.
Q. Was the parking lot in front of you or in back of you?
A. In back of me.
Q. In back of you.

Mr. Segor: No further questions.

Cross examination.

By Mr. Strickland:

Q. Did you hear the Leon County Sheriff make a statement that persons who did not leave would be arrested?

[fol. 107] A. Yes, I did.

Q. Did you make any effort to leave?

A. I was standing on the sidewalk at the time when he made the statement and as I stood up, an officer caught me by the right arm and told me to go this way which was to jail, when I stood up.

Q. Did you stand up just immediately after the Sheriff made that statement?

A. No, I stood up about a minute after because I was sitting, you know, on the sidewalk and my legs were on the embankment and I brushed my legs off before I got up and I picked my sweater up and stood up on the sidewalk where I had been sitting and he caught me by the arm.

Q. And what did he say to you at that time?

A. He said, "This way", and I know I was headed towards the jail so I went on because he said if I resisted arrest, I would be charged stiffer than just, you know—

Q. At that time when you stood up, were you in the middle of a group of students?

A. No, I was behind the students.

Q. You were behind them?

A. Yes, I was.

Q. Then there was nobody behind you. I mean there was [fol. 108] nobody in the line of students farther back away from the jail than you were. Is that right?

A. There were some across the street and some of them on the sidewalk behind the parking lot.

Q. How long is it that you think you continued to sit there after the Sheriff made that statement before you got up?

A. Oh, about a minute because I brushed my legs off and picked my sweater up off the ground because I was sitting on my sweater.

Q. Well, do I understand, now, that the time that elapsed from the time the Sheriff made that warning until you did stand up was just the time that it took to brush your legs and straighten your skirt?

A. No, I picked my sweater up off the ground and shaked it off, too, because on the embankment there's some clay and some scarcity of grass on the embankment so I shook my sweater off and stood up just where I had been standing and he was standing behind me all the time and he caught me by the arm, my right arm, and took me like this and said, "This way". So what could I do but go that way?

Q. Well, now, is it correct that immediately when the Sheriff made that statement that those who did not leave [fol. 109] would be arrested, that you immediately started brushing your legs and picking up your sweater?

A. Yes.

Q. And as soon as you did that, you stood up and an officer grabbed you by the arm?

A. Yes, sir. He was down there all the time right behind me on the sidewalk.

Mr. Strickland: No further questions.

Mr. Segor: No questions, Your Honor.

Mr. Segor: Your Honor, the defense rests.

RENEWAL OF DEFENDANTS' MOTION FOR A DIRECTED VERDICT AND DENIAL THEREOF

Mr. Simon: I would like to renew the motion for a directed verdict at the close of all of the evidence that we made prior on the same grounds without argument at this time so it won't be necessary that the jury be excused.

The Court: That's denied and exception noted.

(At the request of Mr. Simon a 5-minute recess was granted and at the conclusion of the recess the following proceedings were had.)

Mr. Simon: If Your Honor please, I filed in this cause [fol. 110] a motion to quash the information and I stated in ground 7 that there is a segregated courtroom here and I apologized to the court for doing it because I stated that it was in error; and the basis of my apology was information which had been given to me from time to time by the County Attorney of this county and by the various circuit judges of this county. I discounted it as baseless and malicious rumor the fact that on prior occasions when there have been trials in this courtroom and in this courthouse involving race relation situations involving numerous Negro defendants, that the so-called white restrooms of white men and white ladies were locked.

The Court: That was not true this morning. I don't know anything about this afternoon.

Mr. Simon: I discounted it as a baseless rumor and it was not true this morning and, of course, Your Honor knows that the maintenance of such signs is illegal and contrary to the Constitution; that this afternoon and at this very moment those rooms are locked and I regard this as sufficient grounds to demand a mistrial in this cause. I state to your Honor that whichever moron did something as silly as that is affronting this court, is denying justice [fol. 111] to these people and is making a mockery of the law of this State and I respectfully request that Your Honor order, that Your Honor has got the capacity and the ability to run this courtroom and all necessary adjuncts to it; I respectfully submit that Your Honor require that these rooms be opened and that they be permitted to be used by all persons and I move again for a mistrial of this cause until and unless those doors are opened immediately.

The Court: Sheriff, do you know anything about the doors being closed out there? This morning I observed everybody using them.

The Sheriff: I do not, sir. I don't know a thing about it but I do know they were not locked this morning.

The Court: Because I'm not custodian of the building but neither white nor colored could enter them if they were locked.

Mr. Simon: Well, it's perfectly apparent, Your Honor, why this was done because these young men and women were using the so-called white restrooms this morning either out of protest or out of need because there are just too many people to use the restrooms that were available for "colored". Now, I respectfully submit, Your Honor, that this must be an affront to you personally as it is to me [fol. 112] and as it is to every intelligent-thinking person. It's one thing to sit in a trial in a courtroom and expect justice and I think we can get justice in this courtroom but when some underling takes upon himself the task of deciding that he is going to be the arbiter of what is right and what is wrong by locking rooms, I think that this court should take it upon itself to show that the Court, in fact, doesn't stand for that type of silly nonsense. I'm sorry if I sound upset but I am that. I can conduct a trial but I cannot stand still in front of an insult such as this.

The Court: I don't think that I have any authority outside of the courtroom in the operation of the building inasmuch as it's under the Clerk of the Circuit Court. However, if the Sheriff will do so, will you order them to open up all the restrooms around here so they can go to the bathroom?

The Sheriff: I'll so instruct the custodian but I don't have a key to any of those.

The Court: The Court doesn't have one and this morning I observed everybody using them, everybody using the same bathroom.

Mr. Simon: As an officer of this Court I will tell you that I have personally checked both rooms outside of this [fol. 113] courtroom about ten minutes ago and they were both locked and I submit to Your Honor that the one person in this building who did that is one over whom Your Honor has complete power in accord with this court.

The Court: That's the Clerk of the Circuit Court, though, that has the power as custodian of the building.

Mr. Simon: Will Your Honor wait until I get out a writ of mandamus?

The Court: No, what I'm going to do is go ahead and let him open up the rooms and continue the recess where everybody can enjoy themselves.

(Upon conclusion of the recess the following proceedings were had.)

Mr. Simon: The defendants appreciate Your Honor's indulgence as to matters just referred to and because of the success of our efforts, our motion for a mistrial is withdrawn.

The Court: Thank you, Mr. Simon.

TRIAL COURT'S RULINGS AT CHARGE CONFERENCE

(Requested charges are considered by the Court.)

The Court: The Court will give defendants' requested charges Nos. 1 and 3 and refuse to give No. 2 which is as follows: "You are instructed that if you find that the defendants went upon the State's property in good faith, in [fol. 114] the honest and sincere belief that they might do so or that their going upon the State's property was not marked by any spirit of wantonness or willfulness, or evil design, then you must find that the defendants' acts were not malicious and mischievous. In other words, before you can determine that the defendants' actions were malicious and mischievous, the testimony must satisfy you beyond a reasonable doubt that the trespass was not only against the consent of the State, but that it was attended by circumstances of bad faith, intentional wrong, evil intent and without color or right of law on the part of the defendants." And the Court refuses to give requested Charge No. 4 which is as follows: "A trespasser is someone who comes over or upon the property possessed of another without any permission, express or implied, without invitation or permission, or without lawful authority or without color of lawful authority. Therefore, if you find that the defendants were upon public rather than privately owned lands, you must find them not guilty.

"Further, should you find that the defendants had expressed or implied permission to be on the land of another, then you shall find them not guilty."
[fol. 115] "So, also, if you find that the defendants were upon the property lawfully or under color of law, then you shall find them not guilty. The defendants would have been acting under color of law if they believed that they were acting pursuant to a right which is protected by the Constitution of the United States or the Constitution of Florida, or the laws and statutes of the United States or the State of Florida. Such belief need not have been the belief of a prudent man." I am refusing in their presence today defendants' requested Charge No. 5 which is as follows: "You are instructed that in order to find the defendants guilty, you must find that they acted with both a malicious and mischievous intent. By malicious, it is meant that the acts must have been done with evil intent or design and without justifiable excuse. That is, the act was done from innate and/or sheer meanness, and that the act must denote a depraved and wicked spirit. The word mischievous is synonymous with injury and means damage, harm, hurt, or injury. Thus, you must find that the defendants are innocent, unless you find that their acts were done with an evil intent or design, without justifiable excuse and from meanness or wickedness for the purpose of doing damage, [fol. 116] harm, hurt or injury". I am also refusing to give defendants' requested Charge No. 6 which is as follows: "You are further instructed that the State may not lawfully prevent persons from peacefully protesting the denial of constitutional liberties under the guise of enforcing a trespass statute. This is true even though the alleged trespass occurs on State owned property. Thus, if you find that the defendants were peacefully protesting the denial of their constitutional rights or those of their fellows, then you must find them not guilty."

Mr. Strickland: Your Honor, this is the amendment to defendants' requested Charge No. 3 which was to be added

immediately following their No. 3 as worded without objection by the defendants.

(Presented to the Court.)

The Court: You can call the jury in.

(Jury returns.)

[fol. 117]

CHARGE OF THE COURT

Gentlemen of the Jury, these are 32 cases being tried at one time and I might say that this is the first time that I have had the privilege of trying that many cases or the vexation of trying that many cases at one time before a jury and I know it has been a strain on the prosecuting attorney and on the defense attorney in this case and it certainly has been a strain on the Court and probably on you but I might say before beginning my charge here that I appreciate the cooperation of the defense counsel trying these cases all at one time because otherwise he could have required a severance and tried each case individually and I think we would have all been here until next December and we appreciate that we can try them all at one time because the evidence would have been the same in each case, I suppose; but each of these cases, I'll read you the first one. Harriett Louise Adderley, an affidavit filed against her charges that on the 16th of September 1963 in Leon County, that one Harriett Louise Adderley did trespass, with a malicious and mischievous intent, upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County Jail [fol. 118] and contrary to Section 821.18 of the Florida Statutes. The same charge and on the same date is brought against Timothy Benjamin. Another affidavit, with the same charge and the same date, the 16th day of September 1963, was brought against Jesse Evans Blue. Same charge and same date, 16th day of September 1963, charge against Elijah Bradshaw. Another against Mary Dell Bradley; another against Juanita Anne Carruthers; another against

Gail Sylvia Christopher; another one against Geraldine Fields; another one against Conseivillaie Goodson; another affidavit filed, same charge, same date, Ruben Eugene Howard; another affidavit, same charge, same date, against Jerolin Hicks; another affidavit filed against Raymond W. James on the 16th day of September which charges him also on the same charge of trespass; Corrine Johnson also charged the same way on the 16th of September, same charge; another affidavit filed against Nellie Mae Johnson on the 16th of September 1963, the date of the charge, and it's stated the offense that is supposed to have happened and the same charge; Carolyn Yvonne Johnson, same charge, same date; Richard Simpson Jones, III, same charge, same date; Mable Elizabeth Lenon, same charge, same date; Samuel Otis Mackey, same charge, same date; Council [fol. 119] Miller, Jr., same charge, same date; Patricia A. Mays, same charge, same date; Jacquelyn Grace Miller, same charge and same date; Robert Thomas Moses, same charge, same date; Helen Maddox McGhee, same charge, same date; Harris Edward John Perry, same charge, same date; Charles Kenneth Rogers, same charge, also on the 16th day of September, same date; June Delores Rainey, same charge on the same date, 16th of September 1963; James Lawrence Sheppard, same charge, same date; Viviloria Jean Thompson, same charge, same date, 16th of September 1963; Tommie Jean Wright, same charge, same date; William B. Wilcox, same charge, same date and in case you have forgotten the charge in the affidavit, I'll read this one again. "State of Florida versus Norma Alfreda Walls". The affidavit was filed by W. P. Joyce, Sheriff, charges that on the 16th of September 1963 in Leon County one Norma Adfreda Walls did trespass with malicious and mischievous intent upon certain property owned by Leon County, a political subdivision of the State of Florida, said property being located at the Leon County Jail and contrary to Section 821.18 of the Florida Statutes.

[fol. 120] Gentlemen, in this case it will be necessary for

you to render 32 separate and distinct verdicts, one on each case as if they were being tried separately. Now, to each of these affidavits the defendant in each case interposed a plea of not guilty. Therefore, in each case this imposes upon the State the burden to prove every material allegation alleged against the defendant to your satisfaction and beyond a reasonable doubt. Each of these defendants goes on trial with a presumption of innocence and that presumption accompanies him or her throughout every stage of the trial unless and until overcome by competent evidence sufficient to convince you of the guilt of the particular defendant beyond a reasonable doubt.

Now, a reasonable doubt is one conformable to reason, one which a reasonable man would entertain. The Court instructs you that by a reasonable doubt is meant that state of mind of a juror where, after having carefully considered all of the evidence, he cannot say that he has an abiding conviction to a moral certainty of the guilt of the accused. Now, in each case you are the sole judges of the weight of the evidence and the credibility of the witnesses. You are likewise the sole judges to determine if and when the pre- [fol. 121] sumption of innocence in favor of the accused has been overcome by the evidence. Among other ways of determining whether or not a witness speaks the truth, you may consider his or her demeanor on the witness stand, his or her means and ability to see, know and comprehend the facts to which he or she testifies and also the reasonableness or the unreasonableness of the testimony of the witness. In three of these cases the defendants took the stand and when the defendant takes the stand, you may consider his or her testimony and it should be considered by you in the same light and under the same rules of law as the testimony of the State's witnesses are considered.

If you remember, in the affidavit it charges that the violation is contrary to Section 821.18 of the Florida Statutes. That statute provides that every trespass upon the property of another, committed with a malicious and mischievous intent, shall be punishable as provided for in the statute.

But in order to convict any one of these defendants, you must believe that that defendant is guilty beyond a reasonable doubt of the charges. There are several very important parts of the charges. In the first place, you must believe [fol. 122] that there was a trespass. I will give you in a minute a more particular definition of a trespass. Then you must believe that it was upon the property of another beyond a reasonable doubt, and beyond a reasonable doubt you must believe that it was committed with a malicious and, not "or", and mischievous intent. "Intent" is an important word there and so is "malicious" and so is "mischievous". It has to be committed with a malicious and mischievous intent. On criminal intent in general, I have a remark or two I would like to make on that. It says the intent with which an act is done is a necessary element of the crime charged against the defendant. "Intent" is a mental process and as such generally remains hidden within the mind where it is conceived. It is rarely, if ever, susceptible of proof by direct evidence but may be inferred from outward manifestations, by words and acts of a person and all the facts and circumstances and so it is for you to determine all the facts and circumstances in evidence whether or not the defendant committed the acts complained of and whether at such time he had such intent beyond and exclusive of every reasonable doubt.

[fol. 123] The State must prove beyond a reasonable doubt that each of the defendants was present at the time and place alleged in the affidavit. If the State fails to prove these elements beyond a reasonable doubt as to any or all of the defendants, then you must find not guilty those persons who the State fails to prove beyond a reasonable doubt were present at the time and place alleged.

You are instructed that the State must prove beyond a reasonable doubt that the trespass complained of by the State must be upon the property of another. If the State has not proven beyond a reasonable doubt the person or persons who possessed said property, then you must find

the defendants not guilty. If the State has proved to you beyond a reasonable doubt that the property involved was in possession of the Sheriff of Leon County acting in his capacity as such on behalf of Leon County, then the State has fulfilled the requirement that it prove that the alleged trespass was upon the property of another.

A trespass is the use of land or real property not belonging to the defendant and without any authority or right to do so.

[fol. 124] "Malicious" means wrongful, you remember back in the original charge, the State has to prove beyond a reasonable doubt there was a malicious and mischievous intent. The word "malicious" means that the wrongful act shall be done voluntarily, unlawfully and without excuse or justification. The word "malicious" that is used in these affidavits does not necessarily allege nor require the State to prove that the defendant had actual malice in his mind at the time of the alleged trespass. Another way of stating the definition of "malicious" is by "malicious" is meant the act was done knowingly and willfully and without any legal justification.

"Mischievous", which is also required, means that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others in order for you to find that the alleged trespass was committed with mischievous intent.

It is not necessary for the State to prove the defendant intended to do physical damage to a person or to property.

Gentlemen of the Jury, after considering all of the evi-
[fol. 125] dence, the argument of counsel and the charges of the Court, if you believe from the evidence that a particular defendant is guilty beyond every reasonable doubt, the form of your verdict in that case should be, "We, the Jury, find the defendant guilty as charged. So say we all", and let one of your number sign as foreman. On the other hand, in any one of these cases should you entertain a reasonable doubt as to the guilt of the defendant and

should you acquit the defendant, the form of your verdict should be, "We the Jury find the defendant not guilty. So say we all", and let one of your number sign as foreman.

In any event it is necessary that all of you agree on each case whether your verdict be for a conviction or for an acquittal.

When you have reached verdicts in each case, you will endorse the same upon the back of that particular affidavit and you may retire, gentlemen, and consider your verdicts.

[fol. 126] Reporter's Certificate (omitted in printing).

[fol. 127]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

IN AND FOR LEON COUNTY, FLORIDA

AT LAW

No. 10816

Appeal From County Judge's Court

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS, Appellants,

VS.

STATE OF FLORIDA, Appellee.

JUDGMENT OF AFFIRMANCE—November 13, 1964

This cause came on for consideration of the appeal of the appellants from the sentences and judgments of the County Judge's Court of Leon County entered against each pursuant to jury verdicts of conviction; and the pleadings, transcript of trial proceedings, briefs and argument of counsel having been considered, and the Court being advised of its opinion in the premises, it is thereupon

Ordered and Adjudged that the judgments and sentences appealed be and the same are hereby affirmed, and in due course the mandate of this Court shall issue to the trial court.

The appellants were each charged with and adjudged guilty, after jury verdicts of conviction, of having committed a "trespass with malicious and mischievous intent upon—property owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail; contrary to Section 821.18, Florida Statutes." The statute referred to denounces and provides [fol. 128] a misdemeanor penalty for "trespass upon the property of another, committed with a malicious and mischievous intent."

The appellants were part of a group of some 250 persons who marched to the premises of the Leon County jail during the mid-morning of October 24, 1963. They were singing, dancing, clapping their hands, but exhibited no violence or threats of violence in the sense of displaying weapons, brandishing clubs, or other menacing gestures. Though they carried no signs and did not seek to address any group, except by singing, the events which had transpired in the community in the immediate past and the manner of approach of the group made it clear that they were engaged in a protest demonstration against certain policies of public officials and recent actions which had taken place or which they thought had occurred.

Upon arrival at the jail a deputy sheriff in charge there requested them to move back from near the entrance to

the jail, which they did. Later the sheriff of Leon County, who is the custodian of the jail and responsible for its operation and maintenance, arrived and took charge. He had previously called for a number of law enforcement officers to proceed to the jail and they arrived soon afterwards. After watching the demonstration for five or ten minutes during which those outside the jail, and some of the jail inmates also, continued to sing, dance and clap their hands, the sheriff spotted two persons, one of which was the defendant Blue, whom he recognized as leaders in the demonstration. He sought to persuade them to advise the group to disperse and leave the jail premises and warned that if the group did not leave those who remained would be arrested for trespass. The apparent leaders made no effort to comply with the request. The sheriff told them he would wait ten minutes to give them the opportunity to discuss the matter among themselves and then would [fol. 129] have to take action if they had not left. The group did not disperse.

After approximately ten minutes the sheriff announced in loud and clear voice so that all in the group could distinctly hear that they were in violation of the law and if they did not disperse and leave the jail premises it would be necessary to place them under arrest. Upon hearing this statement some of the group left the premises, but others, including the appellants, remained. After a minute or two the sheriff directed his deputies and other peace officers, who had been previously stationed, to arrest those who remained. Arrests were then made of 107 persons, including the thirty-two appellants, who were directed into the jail where they were processed by the normal routine of obtaining information for the jail card, photographing and fingerprinting.

The appellants contend, in substance, that the convictions are illegal, for:

(1) There was no adequate identification of the defendants at the trial as having been among the group which remained on the jail premises at the time of the arrests;

(2) There was no proof of a "trespass", nor, that if there were, such was with malicious and mischievous intent;

(3) That, even if the foregoing grounds are untenable, the statute, Section 821.18, Florida Statutes, as applied to the appellants in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants.

[fol. 130] (1)

The identification of appellants as being among those remaining on the jail premises after the sheriff's command to depart and warning of arrest for failure to do so was accomplished primarily by circumstantial evidence. A reading of the entire transcript discloses adequate, substantial, competent evidence from which the jury may have properly found that from circumstances shown there was a clear inference of identity of each of the appellants as among the guilty trespassers, and that no reasonable hypothesis of innocence could be drawn from such circumstances.

(2)

The "trespass" in this case consisted of remaining on the premises of the jail after a clear and distinct demand of the custodian of the property to depart. The fact that the property involved is owned by a governmental entity and is in a sense public property does not exclude it from being the subject of trespass when it is used for an improper purpose or when the custodian, exercising a reasonable discretion to maintain the property for its intended use or to prevent abuses of its use, demands that it be vacated. All public property is not available as a site for exercising free speech, free assembly, and demonstrative appeals for redress of grievances. Certain property is acquired and maintained for purposes in which such use

would be most inappropriate. The living quarters provided a chief executive or other officer would certainly be privileged from such use except with the consent of such officer. The same would be true of areas where for security reasons necessary to the public interest the public entry may be restricted or completely excluded. To be sure, a large latitude may be demanded by a citizen of opportuni- [fol. 131] ties to give expression to freedom to protest, but this does not mean that every publicly owned place is impliedly available as a site for exercising these rights.

It is the view of this Court that the premises of a jail or prison or other custodial institution are not, as of right, available for massive demonstrations, particularly if they involve emotional attributes, however praiseworthy the motives or objectives may be. A custodial institution is a very delicate, sensitive and potentially tumultuous place. The custodian and responsible head of such an institution has great responsibilities to the public, to the employees, and to the inmates and he must be vested with a rather broad discretion to control activities not only within the buildings but on the premises near the buildings from which operations within may be affected. It is not necessary that there be sticks, stones, weapons or abusive language to render a group assembly completely out-of-place when congregated on jail premises. The fact that it expresses or arouses deep emotions, or may reasonably be expected to have that effect, may well produce in the mind of a prudent custodian an apprehension that the welfare of the inmates, employees and the public is in jeopardy. Under such circumstances it is not unreasonable for him to demand that the demonstrators quit the premises. If they refuse to do so, those so refusing become trespassers. The definition of trespass which the trial judge gave in his instructions to the jury is "the use of land or real property not belonging to the defendant and without any authority or right to do so". This seems fully in accord with the meaning of that term which the legislators intended in the enactment of the statute.

[fol. 132] The trial judge defined "malicious" to mean "a wrongful act—done voluntarily, unlawfully and without excuse or justification". With regard to the term "mischievous" he said that it means "that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others". These definitions also appear appropriate and fully expressive of the legislative intent in the use of these terms in F. S. 821.18.

The evidence sustains a finding of violations of the statute.

(3)

Passing to the constitutional question raised, the Court feels that it must, on its own motion, consider its jurisdiction to review same. Art. V, Sec. 4, Fla. Const., vests in the Supreme Court the appellate review of final judgments of trial courts "directly passing upon the validity of a state statute". The circuit court does not have appellate jurisdiction in misdemeanor cases where the trial court directly passes upon the validity of a state statute. Robinson et al. v. State, Fla., 132 So. 2d 3, and cases cited therein.

This jurisdictional question was not raised by any of the parties in their briefs or oral argument, and both sides apparently proceeded on the concept that no direct attack was made on the validity of the statute per se, but that the challenge made is that the statute was improperly construed and as so construed offended constitutional restraints. This Court is of the view that a contention of that nature does not seek or require trial court action of "directly" passing on the validity of the statute, but rather constitutes another attack to undertake to demonstrate that the construction placed on the statute is erroneous. With this interpretation of the trial court's disposition of the issue it is proper to regard that there is no impediment for this Court to proceed to adjudicate the merits of the contentions made on this appeal.

[fol. 133] Appellants rely largely on Edwards v. South Carolina, 372 U. S. 229, 9 L. Ed. 697, 83 S. Ct. 680 to sustain

their contentions on the constitutional point. This case has been studied carefully. There are two important differences in that case and the one now under review. In Edwards, the demonstration was on the grounds of the state house at the state capitol, which is an appropriate and more or less traditional area to stage demonstrations to urge political or social action deemed desirable. Furthermore, such an area does not have the sensitive and specialized problems associated with a custodial institution. Also, in Edwards the charge against the appellants was of the common law breach of peace and not trespass. The two offenses may have some attributes in common, but are essentially distinct with different elements and objectives.

This Court deems that Edwards is not controlling or persuasive and concludes that no constitutional rights have been offended by the procedures which were followed up to and including the conviction and sentencing of the appellants.

Finding no reversible error and concluding that the trial court acted properly in the several rulings challenged on appeal, the judgments are severally

Affirmed.

Done, Ordered and Adjudged this 13th day of November, 1964.

Ben C. Willis, Circuit Judge.

[fol. 134]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A.D. 1964

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS, Petitioners,

v.

STATE OF FLORIDA, Respondent.

PETITION FOR A COMMON LAW WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

To the District Court of Appeal of Florida, First District:

Petitioners, Harriet Louise Adderley, Timothy Benjamin, Jessey Evans Blue, Elijah Bradshaw, Mary Dell Bradley, Juanita Anne Carruthers, Gale Sylvia Christopher, Geraldine Fields, Conseivillaie Goodson, Rubin Eugene Howard, Gerolin Hicks, Raymond W. James, Corrine Johnson, Nellie Mae Johnson, Carolyn Yvonne Johnson, Richard Simpson Jones, III, Mabel Elizabeth Lenon, Samuel Otis

Mackey, Council Miller, Jr., Patricia A. Mays, Jacquelyn Grace Miller, Robert Thomas Moses, Helen Maddox McGhee, Harris Edward John Perry, Charles Kenneth Rogers, June Delores Rainey, James Lawrence Sheppard, Viviloria Jean Thompson, Tommie Jean Wright, William B. Wilcox, and Norma Alfreda Walls, present this their petition for a common law writ of certiorari and state:

1. Petitioners seek to have reviewed a decision and order of the Circuit Court of the Second Judicial Circuit in and [fol. 135] for Leon County, Florida, dated the 13th day of November, 1964, and filed in the records of said Circuit Court on the 13th day of November, 1964, in Official Record Book 154, page 133.

2. This petition is presented under and pursuant to Article 5, Section 5, of the Florida Constitution, Rule 4.5c of the Florida Appellate Rules, and *Dresner* v. *City of Tallahassee,* Fla. 1964, 164 So.2d 208, which held that the Florida District Courts of Appeal have jurisdiction to issue a common law writ of certiorari directed to an inferior court to determine from the face of the record whether the lower court has deviated from the essential requirements of law, which writ is appropriate when no other provision for review of the lower court's judgment exists (see also *Robinson* v. *State,* Fla. 1961, 132 So.2d 3). In the *Dresner* case, *supra,* at p. 211, as in the instant case, "the affirming judgment of the circuit court did not construe but at most applied federal constitutional provisions" so that no direct review of the criminal convictions by the Florida Supreme Court is possible. The Judgment of Affirmance of the court below (Tr. 67) specifically recognized its right to exercise jurisdiction as the trial court did not directly pass on the validity of the statute in question but rather determined it was not improperly construed or applied in the instant case.

3. This petition is accompanied by a certified transcript of the record of the proceedings, including the decision

petitioners seek to have reviewed (which decision is also attached hereto as Exhibit #1), and a supporting brief.

4. The following are the facts of the case:

a) On the morning of September 16, 1963, petitioners walked in a peaceful group of about 250 Florida A & M University students from the campus about one mile to the Leon County Jail, the jailhouse in which petitioners believed [fol. 136] were incarcerated other students who had been arrested the previous night for protesting segregation in certain downtown Tallahassee theatres (Tr.) to peacefully protest segregated facilities at the jail and the arrest of the fellow demonstrators the previous Saturday (Tr. 173, 177, 178; see also 126, 127).

b) The group of unarmed and orderly students, who had walked the Tallahassee streets in a dignified, self-controlled manner and had met with no trouble or difficulty on the way, walked up the driveway of the jail and stood one or two feet from the base of the steps leading into the interior (Tr. 86, 174-176); the demonstrators did not go inside the jailhouse or even on its steps but stood on a portion of the driveway, the adjacent parking lots and certain grassy areas in front of the jail building (Tr. 93, 113).

c) Deputy Sheriff Dekle requested that they step back to about the middle of the driveway; the students immediately complied and did not again move toward the jail (Tr. 86, 87).

d) According to Deputy Sheriff Dekle, there was no violence or threat of violence, the entrance to the jail was not obstructed, no interference with jail business occurred, and petitioners merely "had their own little dance, . . . jumping up and down and singing and clapping their hands" (Tr. 87, 93).

e) Sheriff W. P. Joyce arrived, found everything was all right inside the jail, went outside, watched the demon-

stration for 5 or 10 minutes, spotted 2 student leaders whom he knew (one being petitioner Blue) and told them that if the group did not leave it would be subject to arrest for trespass (Tr. 113, 114, 118).

f) The leaders made no effort to disperse the group. Sheriff Joyce gave the group about 10 minutes to discuss the matter among themselves, in effect repeated his statement, and a minute or 2 later placed the group under arrest (Tr. 118, 119).

[fol. 137] g) There was testimony at trial that some of the arrested persons were standing on the public sidewalk (Tr. 182, 183, 190) and others could not have left if they wanted to on account of police officers' restraint or intimidation (Tr. 188, 189, 191, 192).

h) Sheriff Joyce testified that he had at least 30 or 40 Deputy Sheriffs, City Police Officers and Highway Patrolmen on the scene (Tr. 125).

i) Neither the Sheriff nor any other police officer ever indicated that the property on which the demonstration occurred was closed to the public or in any way restricted (Tr. 76, 170).

j) Sheriff Joyce testified that he believed a group of 107 people were arrested on the morning of September 16, in front of the Leon County Jail (Tr. 120, 121) but he was not able to identify the petitioners individually.

k) Deputy Sheriff Dawkins was not able to identify the petitioners individually either (Tr. 143-163, and particularly 158-160 and 163).

l) Petitioners were convicted upon jury verdicts in the County Judge's Court in and for Leon County, Florida, of violating Fla. Stat. sec. 821.18, which prohibits "trespass upon the property of another, committed with a malicious and mischievous intent, the property in question allegedly being "owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail . . . " (Tr. 67).

Petitioners appealed to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, which affirmed the convictions (Tr. 67 et seq.).

5. On the foregoing facts, the Court was presented with the following 3 points of law:

a) Whether a group of Negroes, peacefully congregating in front of the Leon County jailhouse, for the purpose of protesting the segregated facilities within, as well as the previous arrest of other anti-segregation demonstrators, [fol. 138] are liable to arrest and conviction for violating Fla. Stat. sec. 821.18?

b) Whether a trespass statute such as Fla. Stat. sec. 821.18 can be invoked by the State for the sole purpose of preventing defendants from exercising their constitutionally protected right to protest Florida's announced policy of segregation of the races and the unlawful arrest of other anti-segregation demonstrators?

c) Whether the total failure of the State to present evidence identifying the defendants as the persons alleged to have committed the supposed trespass was grounds for a directed verdict of acquittal?

On these points of law the Circuit Court below entered its Judgment of Affirmance herein sought to be reviewed, a decision and order in effect answering each point of law in the affirmative, contrary to petitioners' legal arguments and position.

6. The same 3 points of law have been answered in the negative, i.e., in conformity with petitioners' contentions, by Florida and/or Federal decisions concerning the Declaration of Human Rights of the Constitution of the State of Florida, Sections 1, 12, 13 and 15 as well as the Fourteenth Amendment to the Constitution of the United States guarantees of free speech and assembly, the right to petition for redress of grievances, due process of law and equal protection of the laws, whereby the decision and order

of the Circuit Court below deviates from essential requirements of the law, as follows (note that the lettering of the subparagraphs hereunder corresponds to the lettering in paragraph 5):

a) It was contrary to essential requirements of the law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 as (1) the record is devoid of evidence that petitioners went upon the property in question *without any legally sufficient right or excuse,* an essential element [fol. 139] of the crime as set forth in *St. Petersburg Coca Cola Bottling Co.* v. *Cuccinello,* Fla. 1950, 44 So.2d 670, *Boykin* v. *State,* 1898, 40 Fla. 484, and *Williams* v. *U.S.A.,* 1951, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774, and the intent of a reasonable demonstration on public grounds under the prevailing circumstances is a constitutionally protected intent under the Florida and United States free speech guarantees, see e.g. *Edwards* v. *South Carolina,* 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 697, (2) the record is also devoid of evidence of title to the property in question as alleged in the informations, an essential element of the crime according to *Cannon* v. *State,* 1931, 102 Fla. 928, 136 So. 695, and (3) the record is similarly devoid of evidence of any malicious and mischievous intent on petitioners' part, an essential element of the crime as set forth in the statute itself, since the exercise of constitutionally protected rights to protest segregation in a peaceful manner is neither malicious nor mischievous, leastwise both, see e.g. *Edwards* v. *South Carolina, supra,* all of which constitutes a fatal lack of supporting evidence under *Garner* v. *Louisiana,* 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 207.

b) It was contrary to essential requirements of law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 as said statute is here invoked by the State for the sole purpose of preventing petitioners from exercising their constitutionally protected right under the Florida and Federal Constitutions to protest Florida's announced policy and law of segregation, (see e.g. Fla. Cons't.,

Article XII, Sec. 12; Article XVI, Sec. 24; Fla. Stats. Sections 228.09, 230.23(4)(a), 230.233, 233.43(3), 239.01, 241.39, 741.11-741.20, 798.04-798.05, 350.21, 352.03-352.18, 945.08 (Segregation of prisoners); "Report on Florida", pamphlet by the Florida Advisory Committee to the United States Commission on Civil Rights, and especially pp. 38-39), and petty criminal statutes may not be invoked to [fol. 140] interfere with the constitutional rights of minorities, see e.g. *Edwards* v. *South Carolina, supra,* 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697, *Peterson* v. *Greenville,* 1963, 373 U.S. 244, 83 S.Ct. 1119, 10 L.Ed.2d 323, *Lombard* v. *Louisiana,* 1963, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed.2d 338, *Shuttlesworth* v. *Birmingham,* 1963, 373 U.S. 264, 83 S.Ct. 1130, 10 L.Ed.2d 335, *Wright* v. *Georgia,* 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed.2d 349, *Thompson* v. *Louisville,* 1960, 362 U.S. 199. In addition, or in the alternative, (1) Fla. Stat. sec. 821.18 is void for vagueness as construed and applied to permit infringement of freedom of expression, due process of the law and equal protection of the law as guaranteed by the Florida and Federal Constitutional provisions cited in the introductory sections of this paragraph, *Stromberg* v. *California,* 1931, 283 U.S. 359, 369, 51 S.Ct. 532, 75 L.Ed. 1117, *Edwards* v. *South Carolina, supra;* (2) the general statute involved was used to break up a Negro peaceful protest demonstration whereby "no even-handed application of a closely drawn regulatory statute" appears on the record, as required by *Stromberg* v. *California, supra,* and *Edwards* v. *South Carolina, supra;* and (3) under *Hamm* v. *City of Rock Hill,* 1964, —— U.S. ——, 33 L.W. 4079, state trespass convictions for demonstrations at places of public accommodation covered by the Civil Rights Act of 1964 must be vacated (although such demonstrations and convictions took place before passage of the Act, so that by analogy petitioners' peaceful protest of the arrest of fellow demonstrators challenging segregation at Tallahassee movie theatres as well as petitioners' peaceful protest of Florida unconstitutional dis-

criminatory law and policy (including statutory compulsory jail segregation) cannot support the convictions herein.

c) It was contrary to essential requirements of law to affirm the convictions of petitioners for violating Fla. Stat. sec. 821.18 where the record is devoid of evidence [fol. 141] identifying petitioners as the persons alleged to have committed the supposed trespass, an essential element of the crime (see 13 Fla. Jur., *Evidence,* Sec. 438, p. 441, see also *Anderson* v. *State,* Fla. 1926, 110 So. 250, *Clark* v. *State,* 1929, 98 Fla. 874, 124 So. 874, *Mathes* v. *State,* Fla. 1935, 163 So. 479, and *Borrego* v. *State,* 1952, 62 So.2d 43), a fatal lack of supporting evidence under *Garner* v. *Louisiana,* 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207.

7. The decision and order of the Circuit Court below which petitioners seek to have reviewed deviated from essential requirements of the law. Because of the reasons and authorities set forth in petitioners' brief, it is believed that the decision hereby sought to be reviewed is erroneous and contrary to controlling Constitutional law.

Wherefore, petitioners request this Court to grant a common law writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, reversing the convictions of petitioners involved, and granting such other and further relief as shall seem right and proper to this Court.

Respectfully submitted,

Joseph C. Segor, Tobias Simon, Herbert Heiken, Attorneys for Petitioners, c/o Fla. Civil Liberties Union, 311 Lincoln Road, Miami Beach, Florida 33139, By Joseph C. Segor.

Irma Robbins Feder, Richard Yale Feder, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 142]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1965

Not Final Until Time Expires to File Rehearing Petition and Disposition Thereof If Filed.

Case No. G-196

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX MCGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS, Petitioners,

vs.

STATE OF FLORIDA, Respondent.

OPINION—Filed May 11, 1965

A Petition for Writ of Certiorari from the Circuit Court for Leon County. Ben C. Willis, Judge.

Joseph C. Segor, Tobias Simon and Herbert Heiken, for Appellants.

Earl Faircloth, Attorney General; and George R. Georgieff, Assistant Attorney General, for Appellee.

Per Curiam

Certiorari denied.

Carroll, Donald, Acting Chief Judge, Rawls, J., and Melvin Woodrow M., Associate Judge, Concur.

[fol. 143]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1965

Case No. G-196

[Title omitted]

PETITION FOR RE-HEARING

Comes Now the Petitioners in the above entitled cause, and respectfully petition the Court herein for a re-hearing and say that the Court overlooked and failed to consider:

1. That there was a total lack of proof in the trial court below of any of the elements required to be proved under F. S. § 821.18.

2. That the arrest, trial and conviction of the Petitioners under F. S. § 821.18 violated their constitutionally protected rights of due process of law and equal protection of the laws, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3. That as applied to Petitioners, herein, F. S. § 821.18 is unconstitutional and void for vagueness, in that it failed to fairly and fully apprise the Petitioners of the conduct [fol. 144] sought to be proscribed.

4. That the conduct engaged in by Petitioners was constitutionally protected conduct, as is made clear by the most recent decisions of the United States Supreme Court, viz: *Cox* v. *Louisiana,* 85 S.Ct. 453; *Cox* v. *Louisiana,* 85 S.Ct. 476; and *Edwards* v. *South Carolina,* 83 S.Ct. 680.

Wherefore, Petitioners respectfully pray that this Court will grant a re-hearing in this cause.

Respectfully submitted,

Joseph C. Segor, Tobias Simon and Herbert Heiken, Attorneys for Petitioners, c/o Florida Civil Liberties Union, 311 Lincoln Road, Miami Beach, Florida 33139, By: Joseph C. Segor.

Certificate of Service (omitted in printing).

[fol. 145]

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1965

Case No. G-196

[Title omitted]

ORDER DENYING REHEARING—June 7, 1965

Petitioners' Petition for Rehearing in the above styled cause having been considered,

It Is Ordered that the Petition be and the same is hereby denied.

Witness the Honorable Wallace E. Sturgis, Chief Judge, and Seal of the Court this 7th day of June, A. D. 1965.

Raymond E. Rhodes, Clerk.

A True Copy

Attest:

Raymond E. Rhodes, Clerk First District Court of Appeal, Tallahassee, Florida.

[fol. 146] Clerk's Certificate (omitted in printing).

[fol. 147]

SUPREME COURT OF THE UNITED STATES

No. 506, October Term, 1965

HARRIETT LOUISE ADDERLEY, et al., Petitioners,

v.

FLORIDA.

ORDER ALLOWING CERTIORARI—January 31, 1966

The petition herein for a writ of certiorari to the District Court of Appeal of the State of Florida, First District, is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO. ~~500~~ 99

HARRIETT LOUISE ADDERELY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, First District State of Florida

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO._____

HARRIETT LOUISE ADDERELY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, First District State of Florida

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal, First District of Florida, entered in the above-entitled cause on May 11, 1965, and made final, upon the denial of the petition for rehearing, on June 7, 1965.

OPINIONS BELOW

The Judgment of Affirmance of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, affirming jury verdicts and judgments of conviction (R 67), is unreported and appended hereto *infra* at p. A. 1.

The opinion of the Florida District Court of Appeal denying common law certiorari to review the decision of the Circuit Court (and denying rehearing) (R 83) is reported at 175 So. 2d. 249 and appended hereto *infra* at p. A. 8. The Order of the Florida District Court of Appeal denying petition for rehearing is appended hereto *infra* at p. A. 9.

QUESTION PRESENTED

Does the arrest and conviction of a group of Negroes for violating a state statute prohibiting "trespass . . . with a malicious and mischievous intent", when based solely on said Negroes peaceful congregation in front of the County jailhouse for the purpose of protesting the segregated facilities within the jail as well as the previous arrest of other anti-segregation demonstrators, deny said Negroes' rights of free speech, assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

JURISDICTION

The final judgment of the Florida District Court of Appeal, upon its opinion of May 11, 1965, was entered on denial of the petition for rehearing on June 7, 1965 (R 83, 86; A 8, 9). The jurisdiction of this Court is involved under Title 28, United States Code, § 1257(3).

The Florida District Court of Appeal, by denying common-law certiorari, effectively affirmed the judgment below by holding that the decision of the Circuit Court did not deviate from essential requirements of law. See *Dresner v. City of Tallahassee*, Fla. 1964, 164 So. 2d 208, 210, and *Allen v. Miami*, Fla. App. 1962, 147 So. 2d 566, 567. Said Florida District Court of Appeal is the highest state court in which a decision could be had in the case at bar since neither appeal nor certiorari lies to the Florida Supreme Court under Art. 5 § 4(2) of the Florida Constitution and Florida Appellate Rules #2.1a(5)(b) and 4.5c(6), and the Florida Supreme Court is no longer empowered to issue writs of common-law certiorari. See *Dresner v. City of Tallahassee, supra*, at 210, and *Robinson v. State*, Fla. 1961, 132 So. 2d. 3, 5.

STATUTE INVOLVED

The pertinent section of the trespass statute involved, Florida Statute § 821.18, Comp. Gen. Laws 1927, § 7391, states as follows:

> "Every trespass upon the property of another, committed with a malicious and mischievous intent, the punishment of which is not specially provided for, shall be punished by imprisonment

not exceeding three months, or by fine not exceeding one hundred dollars"

STATEMENT OF THE CASE

Proceedings Below

Petitioners seek review of the decision of the Florida District Court of Appeal upholding the Circuit Court's affirmance of their trespass convictions by the County Judge's Court, convictions rising out of a peaceful civil rights demonstration.

Petitioners were 32 members of a group of 107 Negroes who were arrested in front of the Leon County jailhouse in Tallahassee, Florida, on September 16, 1963, for violating Fla. Stat. § 821.18, which prohibits "trespass . . . committed with a malicious and mischievous intent . . . " (R 2-63, 184)

At the jury trial in the County Judge's Court in and for Leon County Florida, all the evidence demonstrated conclusively that petitioners were peacefully congregating in front of the County jailhouse for the purpose of protesting the segregated facilities within as well as the previous arrest of other anti-segregation demonstrators; a full summary of the testimony adduced at trial (R 87-223) appears in the following section of this Statement.

Nevertheless, the jury found petitioners guilty and the trial court entered judgments of conviction and sentences upon such finding (R 2-63, odd# pages; 67).

The Circuit Court of the Second Judicial Circuit in

and for Leon County, Florida, affirmed the trespass judgments and sentences on November 13, 1964 (R 67, A 1).

The District Court of Appeal, First District of Florida, denied a petition for a common law writ of certiorari on May 11, 1965 (R 74, 83; A 8) and denied a petition for rehearing on June 7, 1965 (R 83-83; A 9).

Summary of Evidence

The following summary of evidence adduced at trial in no way conflicts with the facts as set forth in the opinion of the Circuit Court (R 67; A 1).

On September 15, 1963, Petitioners, or at least some of them, met on the campus of Florida A. & M. University to discuss the arrest the previous night of other students who had been peacefully protesting segregation in certain downtown Tallahassee theatres. It was mutually decided that on the following morning a group would form on the A & M campus and march to the jailhouse where it was believed the arrested demonstrators were being incarcerated. The purpose of the demonstration was to *peacefully* protest segregated facilities at the jail and the prior arrest of fellow demonstrators (R 185, 186, 190, 191, 139, 140).

On September 16, 1963, around 9:00 a.m., about 250 students including petitioners met at the appointed place and proceeded to walk in a peaceful group the approximately one mile to the Leon County Jail (R 186, 187). The group made its way through the streets of Tallahassee in a dignified and self controlled manner, encountering no trouble or difficulty along the way. (R 187).

Somewhere between 9:30 and 10:00 o'clock, the group of unarmed and orderly (R 187) students arrived in the vicinity of the Leon County Jail. They walked up the driveway (R 188, 189) and stood 1-2 feet from the base of the steps leading into the jail interior. Deputy Sheriff Dekle, who met them there, requested that they step back to about the middle of the driveway (R 99, 100, 189).

This request was immediately obeyed and the students fell back (R 189). They did not again move toward the jail (R 189). The demonstrators never went inside the jail house, nor even on its steps but stood on a portion of the driveway, the adjacent parking lots, and certain grassy areas in front of the jail building. (R 106, 126).

Deputy Sheriff Dekle testified that his request to move back from the entrance to the jail was obeyed, that the entrance to the jail was not obstructed, and that jail business was not interfered with; he further testified that nobody got hurt, pushed or shoved, and that the students carried no "sticks or stones or bricks or bats or anything like that" (R 100, 106):

> "Q. Other than the singing and the handclapping, were they doing anything other than just standing around?
>
> A. Well, they had their own little dance, I guess. They were jumping up and down and singing and clapping their hands." (R 100)

There was testimony that hollering back and forth between persons in the jail and outside demonstrators occurred at one time (R 98).

After the demonstration proceeded for a while, Sheriff W. P. Joyce arrived and took charge. He drove into the driveway, parked his car and went into the jail to inquire if everything was all right. He found that it was, gave instructions to the jailers and deputies, and then proceeded outside (R 126).

For five or ten minutes the Sheriff watched the demonstration (R 127), and then, spotting two student leaders whom he knew, decided to end it. He walked over to the two, one being petitioner Blue, and told them they would be subject to arrest for trespassing if they did not leave the jail grounds. The leaders made no effort to disperse the group (R 131).

The Sheriff next told the two leaders that he would give them ten minutes to discuss the matter among themselves and would have to take action if they had not left by then. After 8 or 10 minutes, the Sheriff announced to the group that they were in violation of the law and it would be necessary to arrest them if they did not disperse and leave the jail. Upon hearing this statement, some of those who were standing sat down (R 131, 132).

Another minute or two passed and the Sheriff placed the group under arrest (R 133). Some of those arrested were standing on the public sidewalk (R 195, 196, 203) and others could not have left had they so wanted on account of restraint or intimidation by police officers (R 201, 202, 204, 205).

The Sheriff testified that he had at least 30 or 40 Deputy Sheriffs, City Police Officers and Highway Patrolmen on the scene (R 138).

Federal Question Raised

Petitioners assert that their arrests and convictions for trespass-committed-with-a-malicious-and-mischievous-intent violate their rights of free speech and assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States; petitioners assert, in other words, that the Florida trespass statute was unconstitutionally applied in the circumstances of the case at bar.

Petitioners' assertion was raised in their Motion to Quash the Informations (R 64), Motion for a Directed Verdict for Defendants at the close of the State's case (R 165), Motion for a Directed Verdict for Defendants at the close of all the evidence (R 178), and Motion for New Trial, all of which were denied by the trial court (R 88, 179-183, 206). The trial court ruled that *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed 2d 697, "would have little or no application in this case . . ." (R 179).

The Circuit Court similarly rejected petitioners' assertion that "the statute, § 821.18, Florida Statutes, as applied to the appellants' in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants" and held that "Edwards is not controlling or persuasive . . ." (R 69, 73; A 3, 7).

The Petition for a Common Law Writ of Certiorari filed in the Florida District Court of Appeal again specifically raised the Federal question involved (R 74-82, and see especially pp. 77-80), the Petition being grounded upon

the explicit contention that the Judgment of Affirmance and Opinion of the Circuit Court below "deviated from" and "was contrary to essential requirements of law . . ." (R 75, 78, 79, 81).

The Petition for Rehearing filed in the Florida District Court of Appeal reiterated petitioners' assertion and cited the recent *Cox v. Louisiana* cases, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471, and 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d 487[1] in addition to *Edwards v. South Carolina, supra* (R 84, 85).

The Florida District Court of Appeal's per curiam denial of certiorari (and rehearing) effectively affirmed the convictions and judgments below by holding that the decision of the Circuit Court did not deviate from essential requirements of law, i.e., did not deprive petitioners of their Federal constitutional rights of free speech, assembly, petition, due process of law and equal protection of the laws (R 84-86; A 8, 9). See *Dresner v. City of Tallahassee, supra, Robinson v. State, supra,* and *Allen v. Miami, supra.*

REASONS FOR ALLOWANCE OF WRIT

1.) The decision below is in conflict with *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed 2d 697, *Cox v. Louisiana*, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed 2d 471, and *Cox v. Louisiana*, 1965, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d. 487, as it holds petitioner criminally liable for exercising their constitutional rights of

[1]The *Cox* cases were decided by this Court after petitioner's main brief was filed in the Florida District Court of Appeal; the cases were not mentioned in respondent's brief in opposition but were fully discussed in petitioner's reply brief.

'free' speech, assembly and petition. The three cases cited above merely extend the traditional freedom of expression rights set forth in a long line of cases starting with *Gitlow v. New York*, 1925, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138, and *DeJonge v. Oregon*, 1936, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278, to instances of reasonable demonstrations in today's world.

In the *Edwards* case, *supra*, this Court reversed the common-law breach of peace convictions of 187 Negroes who had demonstrated on the State House grounds to peacefully protest South Carolina's discriminatory laws and actions. In the case at bar, a demonstration to protest Florida's discriminatory laws and actions was not only similarly peaceful, but also similarly reasonable in view of the Florida Constitution and statutes[2] (See Florida Constitution, Article XII, § 12, Article XVI, § 24, Fla. Stat. § 228.09, 230.23(4)(a), 230.233, 233.43(3), 239.01, 241.39, 741.11-741.20, 798.04-798.05, 350.21, 352.03-352.18, *945.08* [*Segregation of Prisoners*]), and the actions of the state's power structure (See "Report on Florida" by the Florida Advisory Committee to the U.S. Commission on Civil Rights, particularly pp. 33-39). In the *Edwards* case, as in the case at bar, the statute as applied violated rights to free expression and was void for vagueness; in neither case did the criminal convictions result "from the even-handed application of a precise and narrowly drawn regulatory statute . . .", *Edwards v. South Carolina*, *supra*, at 372 U.S. 236.

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[2]The latest (1963) full edition of Florida Statutes Annotated, 29 F.S.A. "General Index E-O" explicitly lists racially discriminatory laws under the heading "NEGROES".

In the *Cox* cases, *supra*, this Court reversed *Cox's* convictions for (1) breach of the peace, (2) obstructing public passages, and (3) picketing or parading in or near a State Court House with the intent of interfering with the administration of justice. Factual similarities between the *Cox* cases and the case at bar are peculiarly striking:

(1) The civil rights demonstration in the *Cox* cases and the case at bar took place the day after the arrest of students of a Negro college for protesting segregation in private places of public accomodation, downtown store lunch counters and movie theatres, respectively (*Cox* cases, 13 L.Ed 2d 475).

(2) The civil rights demonstration occurred after a student meeting at which plans were made to protest both such segregation and the previous arrests by marching to the jail where the arrested students were being held (in the *Cox* cases, the relevant parish jail was located on the upper floor of the Court House, and in the case at bar, the arrested persons were believed to be held in the Leon County Jailhouse). (*Cox* cases, 13 L.Ed. 2d 475).

(3) The day after the arrests, the demonstrators (about 2000 students in the *Cox* cases, and about 250 students in the case at bar) proceeded in a peaceful and orderly manner. (*Cox* cases, 13 L.Ed. 2d 475-476).

(4) The demonstrators peacefully, properly and without violence or any threat thereof, exercised their freedom of expression at the site involved (in the *Cox* cases, 13 L.Ed. 2d 476-477, the demonstration consisted of picket signs, singing, pledge of allegiance to the flag, and speech; in the case at bar, it consisted of a "little

dance . . . jumping up and down, and singing and clapping their hands").

(5) The demonstrators could be heard by persons in the jail (in the *Cox* cases, 13 L.Ed. 2d 477, the prisoners sang in response to the demonstration, a response which yielded the demonstrators' cheers and applause, and in the case at bar at one time hollering back and forth between persons in the jail and the outside demonstrators occurred).

(6) The demonstrators obeyed police officials' orders or requests to stay in a certain place (in the *Cox* cases, 13 L.Ed. 2d 476, the Police Chief's order to " 'confine' the demonstration 'to the west side of the street' ", and in the case at bar, Deputy Sheriff Dekle's request to stay back to about the middle of the driveway) and the demonstrators never went or attempted to go inside the jail.

(7) Police officers later gave the demonstrators a certain amount of time to demonstrate before being subject to arrest (testimony placed the time limit at seven minutes in the *Cox* cases, 13 L.Ed. 2d 496, and ten minutes in the case at bar).

(8) The demonstrators later refused to break up the demonstration when the Sheriff ordered them to do so. (*Cox* cases, 13 L.Ed. 2d 497).

The *Cox* cases, 13 L.Ed. 2d 478-482 held that the breach of peace conviction infringed free speech and assembly as the demonstration was orderly and involved no violence or threat thereof by the students; fear of violence

on the part of the audience was held irrelevent. But in the case at bar, the Circuit Court held that security reasons and the State's alleged fear of violence or illegal acts on the part of persons inside the jail justified the convictions. The *Cox* cases also held the breach of peace statute unconstitutionally vague as it allowed punishment "merely for peacefully expressing unpopular views", 13 L.Ed. 2d 482. Punishment in the case at bar rests on the same ground.

The obstructing-public-passages conviction in the *Cox* cases was reversed, (although the sidewalk was definitely obstructed and the statute was held constitutional on its face), because there was no "uniform, consistent and nondiscriminatory application" of the statute, 13 L.Ed. 2d 484, 482-486. The case at bar presents the only Florida case interpreting or applying trespass-committed-with-a-malicious-and mischievous-intent with respect to demonstrations or other constitutionally protected freedom of expression.

The *Cox* conviction for picketing-or-parading-in-or-near-a State-Court-House was reversed, although the statute was held constitutional on its face, 13 L.Ed. 2d 492, because the state officials gave permission for the demonstration to take place where it did, "at least for a limited period of time", thus giving rise to State-entrapment in violation of the due process clause, 13 L.Ed 2d 496; the Sheriff's order to disburse was held *ineffective* in removing "the prior grant of permission", 13 L.Ed. 2d 497. Similarly, in the case at bar, the record clearly shows Deputy Sheriff Dekle's grant of permission to demonstrate around the middle of the driveway, with no time

limitation, and the Sheriff's later order to disperse after a ten minute period.

Petitioners submit that the *Edwards* and *Cox* cases are directly in point and clearly reveal the Florida District Court of Appeals' error in holding that the Circuit Court's opinion did not deviate from essential requirements of law by infringing petitioners' constitutional rights of free speech, assembly, and petition.

2.) The decision below is in conflict with *Hamm v. City of Rock Hill*, 1964, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed. 2d 300[3] in which the 1964 Civil Rights Act was held sufficient to reverse state trespass convictions for peaceful store-luncheon-facility-sit-in-demonstrations under the doctrine of abatement. The case at bar as well as the *Cox* cases, *supra*, really involve reasonable demonstrations to secure inter alia admittance, free from racial discrimination, to private places of public accomodation covered by the 1964 Civil Rights Act (upheld as constitutional on its face and as applied in *Heart of Atlanta Motel, Inc. v. U.S.*, 1964, 379 U.S. 241, 85 S.Ct. 348 13 L.Ed. 2d 258, and in *Katzenbach v. McClung*, 1964, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed. 2d 290).

3.) The decision below is in conflict with numerous decisions of this Court prescribing the use of petty criminal statutes for the purpose of interfering with the constitutional rights of minorities, see e.g. *Edwards v. South Carolina*, *supra*, the *Cox* cases, *supra*, *Peterson v. Greenville*, 1963, 373 U.S. 244, 83 S.Ct. 1119, 10 L.Ed. 2d 323,

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[3]See also Blow v. North Carolina, 1965, 379 U.S. 684, 85 S. Ct. 635, 13 L.Ed. 2d 603, and McKinnie v. Tennessee, 1965, 33 L.W. 4319.

Lombard v. Louisiana, 1963, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed. 2d 338, *Shuttlesworth v. Birmingham*, 1963, 373 U.S. 264, 83 S.Ct. 1130, 10 L.Ed. 2d 335, *Wright v. Georgia*, 1963, 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed. 2d 349, and *Thompson v. Louisville*, 1960, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654.

4.) The decision below is in conflict with *Garner v. Louisiana*, 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207, in that convictions based on a total lack of relevant evidence violate the Fourteenth Amendment's due process clause. In the case at bar, petitioners' orderly nonviolent demonstration took place near the County Jail, a particularly appropriate location in view of Florida's compulsory jail segregation as well as petitioner's understanding that fellow demonstrators were incarcerated therein. There was *no* evidence that the area was restricted from public use at all times or for limited times or at any time. There was no evidence of signs prohibiting the public from traversing on the area immediately adjacent to the jail, nor was there any evidence produced of an ordinance or state statute rendering the driveway, lawns and parking lots of the County Jail less open to the public than such areas around any other public building. Indeed, petitioners had explicit official permission to demonstrate where they did for some time before their arrest. Moreover, in exercising their constitutional right to peacefully protest segregation, petitioners evidenced no intent to commit (and did not commit) any unlawful act or violence or threat thereof, either to persons or to property; petitioners obeyed all reasonable requests of police officers. Thus, no evidence whatsoever of "trespass . . . committed with a malicious and mischievous intent" appears in the record.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

By:_____

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CERTIFICATE OF SERVICE

I, RICHARD YALE FEDER, Counsel for Petitioner and a member of the Bar of the Supreme Court of the United States, hereby certify that on , 1965, I served copies of the foregoing Petition for Writ of Certiorari on the Respondent by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to each of the following, to wit, WILLIAM D. HOPKINS, State Attorney, Attorney for Respondent, Lewis Bank Building, Tallahassee, Florida, and EARL FAIRCLOTH, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

RICHARD YALE FEDER
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APPENDIX

[TITLE OMITTED]

(CIRCUIT COURT)
JUDGMENT OF AFFIRMANCE

This cause came on for consideration of the appeal of the appellants from the sentences and judgments of of the County Judge's Court of Leon County entered against each pursuant to jury verdicts of conviction; and the pleadings, transcript of trial proceedings, briefs and argument of counsel having been considered, and the Court being advised of its opinion in the premises, it is thereupon

ORDERED AND ADJUDGED that the judgments and sentences appealed be and the same are hereby affirmed, and in due course the mandate of this Court shall issue to the trial court.

The appellants were each charged with and adjudged guilty, after jury verdicts of conviction, of having committed a "trespass with malicious and mischievous intent upon—property owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail; contrary to Section 821.18, Florida Statutes." The statute referred to denounces and provides a misdemeanor penalty for "trespass upon the property of another, committed with a malicious and mischievous intent."

The appellants were part of a group of some 250

persons who marched to the premises of the Leon County jail during the mid-morning of October 24, 1963. They were singing, dancing, clapping their hands, but exhibited no violence or threats of violence in the sense of displaying weapons, brandishing clubs, or other menacing gestures. Though they carried no signs and did not seek to address any group, except by singing, the events which had transpired in the community in the immediate past and the manner of approach of the group made it clear that they were engaged in a protest demonstration against certain policies of public officials and recent actions which had taken place or which they thought had occurred.

Upon arrival at the jail a deputy sheriff in charge there requested them to move back from near the entrance to the jail, which they did. Later the sheriff of Leon County, who is the custodian of the jail and responsible for its operation and maintenance, arrived and took charge. He had previously called for a number of law enforcement officers to proceed to the jail and they arrived soon afterwards. After watching the demonstration for five or ten minutes during which those outside the jail, and some of the jail inmates also, continued to sing, dance and clap their hands, the sheriff spotted two persons, one of which was the defendant Blue, whom he recognized as leaders in the demonstration. He sought to persuade them to advise the group to disperse and leave the jail premises and warned that if the group did not leave those who remained would be arrested for trespass. The apparent leaders made no effort to comply with the request. The sherrif told them he would wait ten minutes to give them an opportunity to discuss the matter among themselves and then would have to take action if they had not left. The group did not disperse.

After approximately ten minutes the sheriff announced in loud and clear voice so that all in the group could distinctly hear that they were in violation of the law and if they did not disperse and leave the jail premises it would be necessary to place them under arrest. Upon hearing this statement some of the group left the premises, but others, including the appellants, remained. After a minute or two the sheriff directed his deputies and other peace officers, who had been previously stationed, to arrest those who remained. Arrests were then made of 107 persons, including the thirty-two appellants, who were directed into the jail where they were processed by the normal routine of obtaining information for the jail card, photographing and fingerprinting.

The appellants contend, in substance, that the convictions are illegal, for:

(1) There was no adequate identification of the defendants at the trial as having been among the group which remained on the jail premises at the time of the arrests;

(2) There was no proof of a "trespass", nor, that if there were, such was with malicious and mischievous intent;

(3) That, even if the foregoing grounds are untenable, the statute, Section 821.18, Florida Statutes, as applied to the appellants in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants.

(1)

The identification of appellants as being among those remaining on the jail premises after the sheriff's command to depart and warning of arrest for failure to do so was accomplished primarily by circumstantial evidence. A reading of the entire transcript discloses adequate, substantial, competent evidence from which the jury may have properly found that from circumstances shown there was a clear inference of identity of each of the appellants as among the guilty trespassers, and that no reasonable hypothesis of innocence could be drawn from such circumstances.

(2)

The "trespass" in this case consisted of remaining on the premises of the jail after a clear and distinct demand of the custodian of the property to depart. The fact that the property involved is owned by a governmental entity and is in a sense public property does not exclude it from being the subject of trespass when it is used for an improper purpose or when the custodian, exercising a reasonable discretion to maintain the property for its intended use or to prevent abuses of its use, demands that it be vacated. All public property is not available as a site for exercising free speech, free assembly, and demonstrative appeals for redress of grievances. Certain property is acquired and maintained for purposes in which such use would be most inappropriate. The living quarters provided a chief executive or other officer would certainly be privileged from such use except with the consent of such officer. The same would be true of areas where for security reasons necessary to the public

interest the public entry may be restricted or completely excluded. To be sure, a large latitude may be demanded by a citizen of opportunities to give expression to freedom to protest, but this does not mean that every publicly owned place is impliedly available as a site for exercising these rights.

It is the view of this Court that the premises of a jail or prison or other custodial institutions are not, as of right, available for massive demonstrations, particularly if they involve emotional attributes, however praiseworthy the motives or objectives may be. A custodial institution is a very delicate, sensitive and potentially tumultuous place. The custodian and responsible heads of such an institution has great responsibilities to the public, to the employees, and to the inmates and he must be vested with a rather broad discretion to control activities not only within the buildings but on the premises near the buildings from which operations within may be affected. It is not necessary that there be sticks, stones, weapons or abusive language to render a group assembly completely out-of-place when congregated on jail premises. The fact that it expresses or arouses deep emotions, or may reasonably be expected to have that effect, may well produce in the mind of a prudent custodian an apprehension that the welfare of the inmates, employees and the public is in jeopardy. Under such circumstances it is not unreasonable for him to demand that the demonstrators quit the premises. If they refuse to do so, those so refusing become trespassers. The definition of trespass which the trial judge gave in his instructions to the jury is "the use of land or real property not belonging to the defendant and without any authority or right to do so". This seems fully in accord with the meaning of that term

which the legislators intended in the enactment of the statute.

The trial judge defined "malicious" to mean "a wrongful act—done voluntarily, unlawfully and without excuse or justification". With regard to the term "mischievous" he said that it means "that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others". These definitions also appear appropriate and fully expressive of the legislative intent in the use of these terms in F. S. sec. 821.18.

The evidence sustains a finding of violations of the statute.

(3)

Passing to the constitutional question raised, the Court feels that it must, on its own motion, consider its jurisdiction to review same. Art. V, Sec. 4, Fla. Const., vests in the Supreme Court the appellate review of final judgments of trial courts "directly passing upon the validity of a state statute". The circuit court does not have appellate jurisdiction in misdemeanor cases where the trial court directly passes upon the validity of a state statute. Robinson et al v. State, Fla., 132 So.2d 3, and cases cited therein.

This jurisdictional question was not raised by any of the parties in their briefs or oral argument, and both sides apparently proceeded on the concept that no direct attack was made on the validity of the statute per se, but that the challenge made is that the statute was improperly construed and as so construed offended constitu-

tional restraints. This Court is of the view that a contention of that nature does not seek or require trial court action of "directly" passing on the validity of the statute, but rather constitutes another attack to undertake to demonstrate that the construction placed on the statute is erroneous. With this interpretation of the trial court's disposition of the issue it is proper to regard that there is no impediment for this Court to proceed to adjudicate the merits of the contentions made on this appeal.

Appellants rely largely on Edwards v. South Carolina, 372 U.S. 229, 9 L.Ed. 697, 83 S. Ct. 680 to sustain their contentions on the constitutional point. This case has been studied carefully. There are two important differances in that case and the one now under review. In Edwards, the demonstration was on the grounds of the state house at the State Capital, which is an appropriate and more or less traditional area to stage demonstrations to urge political or social action deemed desirable. Furthermore, such an area does not have the sensitive and specialized problems associated with a custodial institution. Also, in Edwards the charge against the appellants was of the common law breach of peace and not trespass. The two offenses may have some attributes in common, but are essentially distinct with different elements and objectives.

This Court deems that Edwards is not controlling or persuasive and conclude that no constitutional rights have been offended by the procedures which were followed up to and including the conviction and sentencing of the appellants.

Finding no reversible error and concluding that the

trial court acted properly in the several rulings challenged on appeal, the judgments are severally

Affirmed.

DONE, ORDERED and ADJUDGED this 13th day of November, 1964.

/s/ Ben C. Willis
BEN C. WILLIS
Circuit Judge

[TITLE OMITTED]

(FLORIDA DISTRICT COURT OF APPEAL)

Opinion filed May 11, 1965.

A Petition for Writ of Certiorari from the Circuit Court for Leon County. Ben C. Willis, Judge.
Joseph C. Segor, Tobias Simon and Herbert Heiken, for Appellants.

Earl Faircloth, Attorney General; and George R. Georgieff, Assistant Attorney General, for Appellee.
PER CURIAM

Certiorari denied.

CARROLL, DONALD, ACTING CHIEF JUDGE, RAWLS, J., and MELVIN WOODROW M., ASSOCIATE JUDGE, CONCUR.

[TITLE OMITTED]

ORDER

(FLORIDA DISTRICT COURT OF APPEAL)

Petitioners' Petition for Rehearing in the above styled cause having been considered,

IT IS ORDERED that the Petition be and the same is hereby denied.

WITNESS the Honorable Wallace E. Sturgis, Chief Judge and Seal of the Court this 7th day of June, A. D. 1965.

RAYMOND E. RHODES
Clerk

A True Copy
ATTEST:

RAYMOND E. RHODES
Clerk First District Court of Appeal
Tallahassee, Florida

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO. [redacted] 19

HARRIETT LOUISE ADDERELY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

Response to Petition for a Writ of Certiorari to the District Court of Appeal, First District, State of Florida

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EARL FAIRCLOTH
Attorney General
WILLIAM D. ROTH
Assistant Attorney General
Counsel for Respondent.

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TABLE OF CITATIONS

IN THE

SUPREME COURT OF THE UNITED STATES

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NO.———

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Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

Response to Petition for a Writ of Certiorari to the District Court of Appeal, First District, State of Florida

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PRELIMINARY STATEMENT

The petition for writ of certiorari supports the allegations of facts by references to those court opinions found in its appendix. The state likewise will support statements of fact made in this response by appropriate references to the same opinions relied on by petitioners. For purposes of saving printing costs, such references will be to the appendix of petitioners' petition.

OPINION BELOW

Respondent concedes that the pertinent opinion herein sought to be reviewed is that found in 175 So.2d 249, and that such opinion is accurately duplicated in the appendix of petitioners' petition.

QUESTION PRESENTED

WHETHER SECTION 821.18, FLORIDA STATUTES, BY VIRTUE OF ITS APPLICATION TO PETITIONERS IN THIS CASE, CONSTITUTES A VIOLATION OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS ASSURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

JURISDICTION

Respondent concedes that appropriate jurisdiction to entertain this proceeding is vested in this court pursuant to 28 U.S.C., 1257.

STATEMENT OF THE CASE

Petitioners were each charged with and adjudged guilty, after jury verdicts of conviction in the County Judge's Court of Leon County, of having committed a "trespass with malicious and mischievous intent upon . . . property owned by Leon County, a political subdivision of the State of Florida . . . being located at the Leon County jail; contrary to Section 821.18, Florida Statutes" (R-2-63, odd number pages; 67).

Thereafter, the Circuit Court in and for Leon County, Florida, affirmed the judgments and sentences of conviction of the County Judge's Court in and for Leon County, Florida (R 67-73).

Whereupon, a petition for a common law writ of certiorari was sought in the District Court of Appeal, First District of Florida. The District Court in a decision reported at 175 So. 2d 249 denied said petition as well as petition for rehearing.

STATEMENT OF THE FACTS

Rather than accept petitioners' "Summary of Evidence" purporting to follow the facts as set forth in the opinion of the Circuit Court, it is respectfully submitted that a more nearly objective statement thereof may be found within the confines of the courts order (R 67-73, A 1-3).

To the extent that said recitation may not be so considered and if it should become necessary in respondent's

discussion of the argument, appropriate corrections and/or additions thereto will be made.

ARGUMENT

Respondent will endeavor to demonstrate to this tribunal that there is no conflict between the decision below and the cases cited by petitioners in support of that proposition.

1.) Petitioners rely heavily on the cases of *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 2d 697, *Cox v. Louisiana*, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471, and *Cox v. Louisiana*, 1965, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487, in support of their contention that the constitutional rights of free speech, assembly and petition were abridged.

Here petitioners' complain that because of their rights under the First and Fourteenth Amendments to the federal constitution they either could not, or should not, have been arrested and convicted for violating Section 821.18, Florida Statutes. To use the *Edwards* case, supra, they purport to recite a series of Florida laws, both constitutional and statutory, a reference to which reveals what some might consider to be discriminatory excesses. It is interesting to note that at this writing they stand as valid law, petitioners' protestations to the contrary notwithstanding. In addition to this, they cite us to a lofty compilation of independent views by the Florida Advisory Committee to the United States Commission on Civil Rights. The objectivity which is to be found in this noble

effort is at least open to some question but, even if it is accepted as represented, one must wonder at just where it fits into the matters properly before this Court for determination.

Petitioners have failed to demonstrate how the void for vagueness quote from *Edwards*, supra, creates a conflict with the present case.

Respondent admits that petitioners' analysis of (1) through (3) on page eleven of petitioners' brief likens the *Cox* cases, supra, unto the present case, but here the comparison ends. In the present case, petitioners proceeded within one to two feet of the jail entrance (R 99, 100) while in the *Cox* cases, supra, the demonstration took place across the street over 100 feet from the building in question.

Cox was the only person arrested and the arrest took place the next day. In the case at bar, Sheriff Joyce's testimony is replete with sworn assurances that no one on the public sidewalks or any other areas customarily used by the pedestrian public was either arrested or molested. Indeed, the very fact that the demonstrators were not arrested on their way to the jail is at least evidence of the fact that the City of Tallahassee, the County of Leon and the State of Florida are well aware that public thoroughfares are free to be used by persons seeking to air grievances.

That the demonstrators stopped just short of entering the jail is quite different from staying across the street as was done in the *Cox* cases, 13 L.Ed.2d 477. This in no way interferred with the normal operation of the courthouse. In the instant case, Deputy Sheriff Dawkins testified the operator of a service truck was prevented from leaving in his truck (R 147).

In the *Cox*, cases, supra, it appears there was testimony that police officials gave permission and then withdrew the permission to congregate. Sheriff Joyce's testimony in this case reveals that no such tacit permission was given (R 126-132). It appears that the sheriff attempted to have the demonstrators stop their trespass as soon as he inquired in the jail and surveyed the situation.

Petitioners contend in any case that their activities in protesting what they considered to be illegal segregation in the jail proper as well as other facilities under the law and policy of the State of Florida did not constitute a malicious and mischievous intent. We may suppose that this is based upon the assumption that since their purpose was noble and since many judicial decisions have indeed on specific occasions (*ad hoc* basis) seemed to vouchsafe rights assured them to do so under the First and Fourteenth Amendments, that their actions here in these circumstances simply could not be challenged or denied. They add to this the fact that their demonstration was not intended to be anything but peaceful, that they had no intent to damage propery, and that they obeyed all *reasonable* requests of the police. The record in this case militates against at least some of these contentions. The very fact that they selected the county property

immediately adjacent to the jail proper clearly shows that their purpose was not simply to protest social wrongs or indeed laws which they felt were incorrect. Their purpose had to be, by virtue of the aforesaid, the aggravation of a situation (prior arrests of demonstrators) which the courts of the land stood ready to correct in an orderly fashion. Surely the location of the county jail itself as well clearly shows that their demonstration was not calculated to reach either the hearts or souls of any respectable portion of the citizenry. Indeed but for the tradesmen and other individuals having specific business in the county jail, it is doubtful that their protest could have reached anyone other than the custodial personnel and the prisoners. In this regard, we observe that there is almost total doubt that any of the people then confined in the county jail were there for any purpose other than criminal charges (R 137, 138).

2.) Respondent vigorously contends that the line of cases decided by this Court since the enactment of the 1964 Civil Rights Act does control the present case. A similar conviction today would stand or fall regardless of the enactment of said act. In *Hamm v. City of Rock Hill*, 1964, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed. 2d 300 the trespass convictions resulted from demonstrations concerning places of public accomodation. Certainly a jail is not a place of public accomodation. We agree that the testimony reflects that petitioners sought to be arrested but fail to see how this could be considered seeking admittance to any place of public accomodation covered by the 1964 Civil Rights Act.

3.) It is noted that the majority of the cases cited in support of the proposition that petty criminal statutes were used to interfer with the constitutional rights of minorities were cases that would now be covered by the 1964 Civil Rights Act. Respondent has demonstrated how this case differs from those situations. The *Cox* cases, supra, have also been distinguished from the case at bar.

4.) Petitioners contend that the convictions in the present case are based on a total lack of relevant evidence as was found in *Garner v. Louisiana,* 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207.

The question of whether petitioners' motives made their intrusion on county property an excusable or legally sufficient one is tightly intertwined in their entire argument rather than in any given portion thereof. Suffice it to say that if this Court should determine, after a full review of the record, that petitioners had an unbridled right to air their protests in the manner in which the record reflects they did, then of course the conviction cannot stand.

We agree that the only trespass was that upon the county property adjacent to the county jail proper. None of petitioners invaded the jail or any of its out-buildings. It seems clear that the trespass was committed entirely upon access routes and the adjacent lawns, approaches, walkways and other proximate areas.

Petitioners urge that the record fails to reveal whether the areas discused above were restricted from public use at any or all times and indeed urge that no signs limiting or prohibiting the public's use thereof are to be found.

We concede there were no signs of that nature but the record is quite clear and indeed uncontroverted that when Sheriff Joyce announced his decision that petitioners must quit their trespass (R. 119, 120, 122, 129, 132, 134), they then had graphic evidence of a present restriction more than adequate to meet their present complaint in that regard.

We might observe in passing that we have never understood that it is necessary to read or make known the specific provisions of any given ordinance, law or regulation under which a police officer may make an arrest. While it may be correct to say that the property upon which petitioners conducted their alleged protest was open to the public, it is impossible to view it within those narrow confines without at the same time considering the circumstances above discussed, to-wit: their adament refusal to quit the county property after notice by the sheriff that their failure to do so would result in their arrest and prosecution for trespass.

Next the complaint seems to be that because of the language of the statute, the state failed to establish, in accord with certain definitions which petitioners urge, that this trespass; if such it was, was committed with a "malicious and mischievous" intent. Throughout their argument petitioners seem to refer to the common law and the occasions on which malicious and mischievous intent may have found its way into prosecutions brought thereunder. Careful research has failed to disclose any such genesis in this legislation. The same research had disclosed at least as many cases from foreign jurisdictions in support of a conclusion that malicious and mischievous means a good bit less than that which petitioners urge it must mean.

Some of them are *Springer v. State*, 224 Ind. 241, 66 N.E.2d 529; *Barber v. State*, 199 Ind. 146, 155 N.E. 819, 820.

The above, when coupled with at least one of the acceptable definitions thereof to be found in *Webster's New International Dictionary of the English Language*, Second Edition, Unabridged, leaves the matter in the posture of being at least as acceptable as the definitions urged by petitioners.

Let it be urged that this is no more than sematic evasion respondent contends that while words may differ in some respects, it would seem quite correct to assume that maliciously and mischievously mean at least the intentional doing of an act (in this case trespass) without just cause or excuse. That they may encompass more is perhaps also true. That it need not encompass more is undeniable.

Quite apart from the above and to the extent that petitioners urge that public property is at their unbridled disposal as a forum to air grievances, it is respectfully submitted that the federal law specifically prohibits such activity in and about the region of the Supreme Court of the United States. Section 13k of Title 40 of United States Code reads as follows:

"§ 13k. *Same; parades or assemblages; display of flags*
It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. Aug. 18, 1949, c. 479, § 6, 63 Stat. 617"

To like general effect is Section 401 of Title 18 of the United States Code which addresses itself to the misbehavior of any person in the presence of a court of the United States or so near thereto as to obstruct the administration of justice.

By analogy, may it not be fairly concluded that if the quiet processes of federal judicial labors may not be abridged by activities such as those involved here, surely the supercharged atmosphere of a county penal institution should remain at least as insulated therefrom. We submit that objectivity commands an affirmative answer.

CONCLUSION

Wherefore, it is concluded that not only was there no violation of free speech, assembly, petition, due process of law and equal protection of the laws assured by the fourteenth amendment, but that in fact the issues raised by the petition for writ of certiorari did not lie within the broad scope of reversible error.

WHEREFORE, this Court is respectfully requested to deny the petition for writ of certiorari.

Respectfully submitted,

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Assistant Attorney General
Counsel for Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that copies of the above and foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, First District of the State of Florida have been forwarded by mail this ..... day of January, 1966, to the following as members of counsel for petitioners:

Honorable Richard Yale Feder, 250 NE 17 Terrace, Miami, Florida, 33131, Honorable Tobias Simmon, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Herbert Heiken, c/o Florida Civil Liberties Union, 223 S.E. 1st Street, Miami, Florida, 33131, Honorable Joseph C. Segor, 311 Lincoln Road, Miami Beach, Florida, 33139, Honorable Irma Robbins Feder, 110 N. Hibiscus Drive, Miami Beach, Florida, 33139.

Of Counsel for Respondent

IN THE

Supreme Court of the United States

October Term, 1966

No. [redacted] 19

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

October Term, 1966

No. 506

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

BRIEF FOR PETITIONERS

INTRODUCTION

The Petition filed herein is symbolized by "P", the Appendix to the Petition by "PA", the Response to the

Petition by "RP", and the printed record by "R". Certain portions of the Petition are incorporated herein by reference to save printing expenses in view of the fact that the case has been placed on the summary calendar and "extended argument" is not required.

All emphasis in quoted material is supplied by counsel unless stated to the contrary.

OPINIONS BELOW

The Judgment of Affirmance of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, affirming jury verdicts and judgments of conviction, is unreported (R. 75, PA. 1; #10816, No. 13, 1964). The opinion of the Florida District Court of Appeal, denying common law certiorari to review the decision of the Circuit Court, is reported at 175 So. 2d 249 (R. 90, PA. 8); the order denying petition for rehearing thereon is unreported (R. 92, PA. 9).

JURISDICTION

The final judgment of the Florida District Court of Appeal, upon its opinion of May 11, 1965, was entered on denial of the petition of rehearing on June 7, 1965 (R. 90-92, PA. 8-9). The Petition for a writ of certiorari was filed in this Court on August 30, 1964, and was granted on January 31, 1966 (R. 93). The jurisdiction of this Court rests on Title 28, United States Code, §1257(3). The Petition sets forth relevant Florida law (P. 3), and the respondent-State of Florida "concedes that appropriate jurisdiction to entertain this proceeding is vested in this court" (sic, RP. 2).

QUESTION PRESENTED

DOES THE ARREST AND CONVICTION OF A GROUP OF NEGROES FOR VIOLATING A STATE STATUTE PROHIBITING "TRESPASS . . . WITH A MALICIOUS AND MISCHIEVOUS, INTENT", WHEN BASED SOLELY ON SAID NEGROES' PEACEFUL CONGREGATION IN FRONT OF THE COUNTY JAILHOUSE FOR THE PURPOSE OF PROTESTING THE SEGREGATED FACILITIES WITHIN THE JAIL AS WELL AS THE PREVIOUS ARREST OF OTHER ANTI-SEGREGATION DEMONSTRATORS, DENY SAID NEGROES' RIGHTS OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

STATUTE INVOLVED

The pertinent section of the trespass statute involved, Florida Statute §821.18, Comp. Gen. Laws 1927, §7391, states as follows:

> "Every trespass upon the property of another, committed with a malicious and mischeivous intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars."

STATEMENT OF THE CASE

Proceedings Below

(See also P. 4-5, 8-9)

Petitioners seek reversal of the decision of the Florida District Court of Appeal upholding the Circuit Court's affirmance of their trespass convictions by the County Judge's Court, convictions for participation in a peaceful and reasonable civil rights demonstration.

Petitioners were 32 members of a group of 107 Negroes arrested on September 16, 1963 in front of the Leon County jailhouse in Tallahassee, Florida, under Florida Statute §821.18, which prohibits "trespass . . . committed with a malicious and mischievous intent" (R. 2-3, 52).

Although the evidence adduced at trial (R. 42-75, summarized infra) conclusively established petitioners' peaceful assembly to protest the segregated jail, other segregated public facilities, and the prior arrest of other anti-segregation peaceful demonstrators, the jury found all guilty and the trial court thereupon entered judgments of conviction and sentences (R. 1-2, 76).

The Leon County Circuit Court affirmed the convictions and sentences on November 13, 1964 (R. 75, PA. 1) and the District Court of Appeal, First District of Florida, denied a petition for a common law writ of certiorari on May 11, 1965 (R. 82, 90; PA. 8), as well as a petition for rehearing on June 7, 1965 (R. 91-92; PA. 9).

Petitioners asserted, at all stages of the proceedings below, that the Florida trespass statute was unconstitutionally applied in the case at bar in view of their rights of free speech, assembly, petition, due process of law and equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Petitioners' Motion to Quash the Informations (R. 2), Motions for Directed Verdict (R. 49, 65) and Motion for New Trial were denied by the trial court (R. 4, 49-50, 65), which ruled that **Edwards v. South Carolina**, 1963, 372 U. S. 229, 83 S.Ct. 680, 9 L.Ed. 2d 697, was inapplicable (R. 49). The Circuit Court agreed that petitioners' rights were not abridged and held the **Edwards** case "not controlling or persuasive" (R. 78, 81; PA. 3, 7).

The Petition for a Common Law Writ of Certiorari, filed in the Florida District Court of Appeal, again specifically raised the Federal question involved (R. 82-89, especially 86-88), and asserted that the Circuit Court's affirmance and opinion "deviated from" and "was contrary to essential requirements of law" (R. 83, 87-89), as did the Petition for Rehearing (R. 91-92). The Florida District Court's per curiam denial of certiorari (and petition for rehearing) effectively affirmed the judgments below and held petitioners' constitutional rights not violated (R. 90-92; PA. 8, 9; see **Dresner v. City of Tallahassee**, Fla. 1964, 164 So. 2d 208, 210, **Robinson v. State**, Fla. 1961, 132 So. 2d 3, 5, and **Allen v. Miami**, Fla. App. 1962, 147 So. 2d 566, 567).

It should be noted that the recent **Cox v. Louisiana** cases, 1965, 379 U. S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed. 2d 471 and 487, were decided by this Court shortly after petitioners' main brief in support of cer-

tiorari was filed in the Florida District Court of Appeal; although the Cox cases were not noted in respondent's brief therein, they were fully discussed in petitioners' reply brief and explicitly cited in the Petition for Rehearing (R. 91-92).

Summary of Evidence

(See also P. 507)

The instant summary does not conflict with the facts contained in the Circuit Court's opinion (R. 75; A. 1) but contains more details. All "32 cases . . . [were] tried at one time" in the County Judge's Court (R. 70-71). Six witnesses testified before the jury, three on each side: Sheriff Joyce, Deputy Sheriff Dekle and Deputy Sheriff Dawkins appeared on behalf of the State; three student demonstrators, Misses Walls, Mays and Wright, testified on behalf of defendants (petitioners in this Court). The evidence adduced at trial was not in conflict concerning the material facts as shown by the resume of all testimony which follows.

On September 15, 1963, all or some of petitioners met on the Florida A & M University campus to discuss the arrest the night before of other students for picketing and otherwise peacefully protesting segregation in certain downtown Tallahassee movie theatres; the group also discussed police brutality that "was administered to the helpless . . . and unarmed girls" at the prior demonstrations (R. 52, 56). It was decided that the next morning the group would walk from the campus to the Leon County Jailhouse (where some of the arrested demonstrators were being held, R. 19, 41-42) "out of protest

of a segregated jail, as well as the theatres and other public facilities" and also to protest the police brutality (R. 52-60).

On September 16, 1963 around 9 a.m., about 250 students, including petitioners, met at the campus and "walked in a peacful group . . . on the sidewalks" the mile or so to the jail. The "orderly group" did not disturb people on the way, and carried "no bats, no knives, blackjacks or anything of that sort" (R. 53), nor even any signs (R. 60).

Petitioner Walls, who had studied "[c]ivics and history", was "taking a government course" at Florida A & M at the time, and was familiar with American history and great documents, including the Constitution and Declaration of Independence (R. 51-52), testified that the group did not go to the jail "with the intent of violating any laws" or damaging property, etc., but went "only in protest," "strictly in protest of segregated facilities"; she correctly felt she "had a right to . . . make this protest" (R. 55-56, see also 58).

The orderly unarmed students arrived at the jail around 9:30 or 10:00 o'clock, and walked up the driveway onto "the grassy section out of the way of the cars . . . parked there" (R. 54, 13).

Deputy Sheriff Dekle, who saw the 175 or 200 demonstrators approach (R. 7, 15), testified that they never came any closer to the jail building than 1½ or 2 feet from the bottom step of four steps leading from the driveway to the jail door (R. 10). Advising the group that they could not block the jail entrance, Dekle asked

them to go back to about the middle of the driveway and they did. They "did obey" his request, moving as fast as 200 people could move, and never came "close to the jail after that time" (R. 10, 14-15).

Petitioner Wall stated that there was not "any protest" at Dekle's request and that they all "dropped back peacefully" (R. 54).

The demonstrators never went onto the jailhouse steps, leastwise inside the jail. They stood (for the half hour of the peaceful protest, R. 55) on part of the driveway, adjacent parking lots, and some grassy areas in front of the jail building (R. 14, 27).

According to Deputy Sheriff Dekle, nobody got "pushed or shoved . . . or hurt", and he saw no one "carrying any sticks or stones or bricks or bats or anything like that." The demonstrators were merely doing "their own little dance . . . jumping up and down and singing and clapping their hands" (R. 11), singing the "Freedom" song among others (R. 17). There was also some hollering back and forth between the peaceful protestors and the "4 or 5 colored females in one of . . . [his] juvenile cells . . . being held in contempt of court . . . in connection with the demonstration that had taken place in front of the Florida State Theatre a few nights before" (R. 9, 18-19). The jail segregates all prisoners on the basis of race as well as sex (R. 19).

According to Deputy Sheriff Dekle, the demonstrators did not obstruct the jail entrance, nor interfere with jail business (R. 14, 16). People could go in and out of the jail (R. 19). Although vehicles could not drive up

to the door, Dekle never asked the demonstrators to go back any further (R. 21). Other testimony established that the Sheriff and Deputy who arrived later had no trouble parking where they desired and going into the jail (R. 36, 43), and that no other vehicles attempting to enter or leave had any trouble (R. 55, 48).

Sheriff Joyce was not at the jail when the demonstrators arrived. He received a telephone call about it (R. 10, 35) while he was in a conference with one of the Circuit Judges and five or six attorneys in the Circuit Judges' Chambers discussing a hearing about to take place (R. 27) in the case of "Tallahassee State Theatres, Inc. v. Due", contempt of court charges and a civil suit brought against the Sheriff and others for depriving Negroes of their constitutional rights to be admitted to the downtown movie theatres free from state-enforced or encouraged racial discrimination and to peacefully protest therefore (R. 35; these cases are discussed in Argument, infra). Sheriff Joyce admitted that this case he was discussing "arose out of a demonstration" and that he "assumed . . . [the instant demonstration at the Leon County jail] was in protest of what had been done . . . [and] never found any reason to learn to the contrary" (R. 35-36).

After receiving the call, Sheriff Joyce ordered his office "to call the city police department, Florida highway patrol and all of our men and have them go directly to the jail" (R. 27). The Sheriff then drove to the jail and finding some of the officers he had ordered already there, he "parked . . . and immediately went into the jail to make an inquiry to see if anyone had come into the jail, or if everything was in order in the jail." Find-

ing "[n]o disturbance inside", he gave orders to his jailers, deputies and officers and "then came outside" (R. 27). Sheriff Joyce watched the demonstrators "singing, chanting . . . [for] 5 or 10 minutes maybe" (R. 28). The group had "some fluctuation moving forward and backward." The Sheriff "asked them at one time to move back and they generally went along with that" (R. 34).

After watching for 5 or 10 minutes, Sheriff Joyce went over to 2 "student leaders" he recognized, petitioner Blue and Alton White (who was not a defendant at trial and is not a petitioner herein) (R. 28-29). The Sheriff spoke to the two men in a conversational voice not audible to most of the demonstrators (R. 38, 57). He told them they would be subject to arrest for trespass if they did not leave. "I asked these boys if they would get with the group and ask them to leave the property." Petitioner Blue did not try to disperse the group (R. 30).

Sheriff Joyce then said "I'm going to give you boys about 10 minutes to discuss it between yourselves and if at that time you have not left, I am going to have to take action." He went towards the steps, "waited 8 to 10 minutes", and then made two announcements "to the entire group": first, they would be arrested if they did not leave the jail; second, "if they offered any resistance in any form or manner if I placed them under arrest . . . there would be an added charge of resisting arrest" (R. 31-32). Sheriff Joyce testified that he told the demonstators they would be arrested for trespassing if they didn't leave and that "any resistance to arrest would constitute an additional charge against . . . [t]hose so resisting . . .", telling the group "all of that at the same time" (R. 39).

Sheriff Joyce further testified that some of those who were standing sat down at his announcement (R. 31); he waited "a minute or two". When "they made no effort whatsoever to leave", he placed the group under arrest and ordered the officers to take them into custody (R. 32). There were 30 or 40 deputy sheriffs, highway patrolmen and city police officers at the scene (R. 34-35). The Sheriff later testified he gave the demonstrators "a minute or two or three" and that it was at most "four minutes" between his general announcement and the group arrests (R. 39-40). The Sheriff admitted that he didn't give those on the outskirts of this crowd or back a few rows "very long" because when some started sitting down he "realized what their answer was" to his dispersal order. The Sheriff "could not say" which demonstrators sat down or remained standing, nor whether the sitters were in the front or back (R. 40). When arrested, the group quietly marched into the jail basement without resistance or violence of any kind. According to Sheriff Joyce, "onlookers" on the sidewalks were not arrested, nor were persons who made any effort to turn and leave. He was, however, not sure how many demonstrators were arrested as one person counted 96, one counted 106, and "later the record reflected, I believe, 107" (R. 32).

Petitioner Walls testified that she was near petitioner Blue and White when she saw the Sheriff talking to them, but could not hear the conversation "at all" (R. 57). When the Sheriff finally addressed the whole group, he "asked us to disperse within 5 minutes" or be arrested. His deputies and police officers, who "were standing apart" before the Sheriff's announcement to the entire group, "as he said it and after 5 minutes were up, . . . just closed in" (R. 58). They also arrested sev-

eral demonstrators who were standing on the public sidewalks and brought them "into the group" (R. 58-59).

Petitioner Mays testified that she didn't "have a choice really" when the Sheriff made his announcements to the group, as she would be arrested for trespass if she remained, and she could not leave without resisting arrest by the officers surrounding her, one of whom was touching her left arm (R. 62).

Petitioner Wright testified that she was on the sidewalk behind the students when she heard the Sheriff's announcement; she immediately tried to leave, and was arrested anyway (R. 63-65):

> "I . . . stood up . . . and he [an officer] was standing behind me all the time and he caught me by the arm, my right arm, and took me like this and said 'this way.' So what could I do but go that way?" (R. 65).

She stated that it took her "about a minute" to pick up the sweater she was sitting on before standing (R. 64), i.e., a minute between the Sheriff's announcement and her arrest.

Sheriff Joyce and Deputy Sheriff Dawkins testified that some of the demonstrators (whom they could not identify) said they wanted to go to jail (R. 32, 46). Petitioners Wall, Mays and Wright all testified to the effect that they went to the jail as a form of peaceful protest and not to get arrested (R. 52, 62, 64).

Several trial court rulings may be briefly noted. Prior

to selection of the jurors, the trial judge informed the Jury Panel that in his opinion the case concerned trespass only: "This is not a segregation case . . . there's no attempt . . . to integrate anything" (R. 6). At the conclusion of the presentation of all evidence, the trial court denied defendants' requested charges involving their Constitutional rights of peaceful protest (R. 68-69, and particularly defendants' requested Charge No. 6).

Defendants' Motion for Mistrial based on the fact that "the so-called white restrooms of white men and white ladies were locked" at the afternoon trial session was withdrawn when the trial judge determined a writ of mandamus was not necessary as he did have power to ask the Sheriff to order the custodian to "open up the rooms and continue the recess where everybody can enjoy themselves" (R. 66-68).

ARGUMENT

Preface

Respondent-State of Florida chose to file no Brief in Opposition to the Petition for a Writ of Certiorari herein within the time allowed by the rules, but did file an untimely Response (mailed to petitioners on January 12, 1966) upon this Court's request for such "on or before December 22, 1965."

Petitioners shall not repeat the material contained in their Petition herein, but shall instead incorporate it by reference while refuting the fallacies in the Response. Section numbers of the Argument which follows correspond directly to those in the Petition's "Reasons for

Allowance of Writ" (P. 9, 14, 15) and in the Response's "Argument" (RP. 4, 7, 8). All facts noted in the Argument herein are set forth with record citations in the Summary of Evidence, **supra.**

The case at bar does not involve an isolated protest at the Leon County jailhouse on September 16, 1963. The demonstration in question was part of a concerted and continuing effort by interested citizens to secure freedom from racial discrimination in state institutions and in private places of public accommodation. The demonstrations started over a year **before** passage of the Civil Rights Act of 1964. In **Tallahassee Theatres, Inc. v. Due,** Leon County Circuit Court 1963, 22 Fla. Supp. 55, appeal dismissed, 160 So. 2d 169, the movie theatre operators sought to restrain picketing of their downtown Tallahassee theatres. Judge Willis' "Summary final decree" set forth the demonstrations and picketing to end racial discrimination conducted by a Florida A & M student group as well as "a large number of other persons" and noted his temporary restraining order of May 29, 1963, supplemental enforcement order of May 30 and modification order of May 31, 1963. He also noted contempt proceedings arising out of these orders. Judge Willis' December 5, 1963 "Summary final decree" entered a permanent injunction barring all "unreasonable picketing" and setting forth conditions concerning the number of persons, space between them, etc. In attempting to render "a proper blending of the rights of the parties," Judge Willis balanced what he deemed the theatre operators' right to discriminate on the basis of race against the defendants' right to exercise free speech and assembly to protest such racial discrimination. Judge Willis conceded that "the record in this case would tend

to show that it has been the practice of the plaintiffs to refuse to admit Negroes who sought admission to the theatre" (at p. 58).

In **Due v. Tallahassee Theatres, Inc.**, 5th Cir. 1964, 333 F. 2d 630, the United States Court of Appeals for the Fifth Circuit reversed the dismissal of "a civil rights complaint . . . as against the two theatre corporations and their managers, and as against city officials and the City of Tallahassee and . . . **W. P. Joyce, Sheriff of Leon County, Florida** . . . for conspiracy to deny plaintiffs and the class they represented civil rights asserted under Sections 1981, 1982, 1983 and 1985, Title 42, United States Code Annotated" by, under color of law, requiring Tallahassee white persons to conduct their private businesses on a racially discriminatory basis and requiring peace officers to prevent peaceful protests and arrest Negroes seeking service on a desegregated basis (at p. 631). The Court of Appeals reversed the District Court and upheld the complaint as stating a cause of action under the old Civil Rights Acts: the opinion bears the date June 26, 1964 and the 1964 Civil Rights Act bears the date July 2, 1964). The opinion noted that Sheriff Joyce has no legal immunity from injunction where "it is alleged that the Sheriff exceeds his duty to carry out the state court order or that the state court order itself is void" and that "the depositions taken by the Sheriff produced testimony to support the contentions" that he did invade appellants' constitutional rights (at pp. 632-633). The appellate court also noted deposition testimony in support of the complaint's allegations of police brutality in connection with the peaceful demonstrations to desegregate the movie theatres (at p. 633).

Petitioners contend that the reasonableness of the September 16, 1963 peaceful demonstration involved in the instant case is particularly clear when the case is properly placed in context of the Tallahassee situation prevailing at that time.

I

PETITIONERS' CONVICTIONS VIOLATE THEIR CONSTITUTIONAL RIGHTS TO FREEDOM OF SPEECH, ASSEMBLY AND PETITION.

The Petition (p. 9-14) describes the striking similarities between the case at bar, **Edwards v. South Carolina**, 1963, 372 U. S. 229, 83 S. Ct. 680, 9 L. Ed. 2d 697 and the recent **Cox v. Louisiana** cases, 1965, 379 U.S. 536 and 559, 85 S. Ct. 453 and 476, 13 L. Ed. 2d 471 and 487. The **Edwards** and **Cox** cases are controlling as they prohibit criminal liability for exercising constitutional rights of free speech, assembly and petition under circumstances comparable to those existing in the case at bar. Respondent's "endeavor" to distinguish the **Edwards** and **Cox** cases is peculiarly unsuccessful (RP. 4).

Respondent refers to the Florida constitutional and statutory laws cited by petitioners (P. 10) as "what some might consider to be discriminatory excesses" and finds it "interesting to note that they stand as valid law at this writing, petitioners' protestations to the contrary withstanding" (RP. 4). In other words, respondent—State of Florida explicitly defends as "valid law" Florida constitutional and statutory provisions requiring separate schools for white and Negro children, segregated facilities in

railroads and other common carriers, no marriage or adultery or habitual cohabitation between white and Negro persons, and segregated prisons! Not only does respondent ignore this Court's decisions including **Brown v. Board of Education**, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (re schools) & **Gayle v. Browder**, 1956, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed. 2d 1114 (re transportation), apparently seeking at this late date to rejuvenate the "ad hoc basis" specious argument (cf. RP. 6), but respondent also ignores decisions specifically invalidating some of the Florida laws involved, i.e. **Gibson v. Board of Public Instruction of Dade County, Fla.**, 5th Cir. 1959, 272 F. 2d 763 (holding unconstitutional Florida's school segregation laws) and **McLaughlin v. State of Florida**, 1964, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed. 2d 222 (holding unconstitutional Florida's criminal statute prohibiting interracial illicit cohabitation). Suffice to say that the Response itself clearly reveals the relevant attitude of the State in which the peaceful demonstration involved took place.

Respondent's second and last attempt to distinguish the **Edwards** case consist of its inability to see the relevance of the "void for vagueness" holding therein to the case at bar. In **Edwards**, this Court held that the common-law breach of peace crime involved was void for vagueness as construed and applied since it permitted the infringement of constitutional rights to freedom of expression; this Court quoted appropriate language from **Stromberg v. California**, 1931, 283 U.S. 359, 369, 51 S. Ct. 532, 75 L.Ed. 1117. Petitioners herein assert that the trespass - committed-with-a-malicious-and-mischevous-intent statute, as construed and applied, violated their rights to freedom of expression and equal protection of

the laws as guaranteed by the Federal Constitution and is consequently void for vagueness.

As far as the Cox cases are concerned, respondent relies on the fact that the Cox "demonstration took place across the street over 100 feet from the building in question" (RP. 5), whereas in the case at bar the "demonstrators stopped just short of entering the jail" (RP. 6). In both cases, the demonstrators stayed where the police officer told them to stay, the (Cox) 200 demonstrators across the street from the Courthouse and the 250 demonstrators (in the case at bar) in the driveway. The Cox cases are not distinguishable. The demonstrators in the case at bar stayed at the middle of the driveway after Deputy Sheriff Dekle advised them that they could not block the jail entrance and asked them to go there; Deputy Sheriff Dekle was "satisfied" when Petitioners went to this location and he testified that they did not come closer to the jail afterwards. Petitioners submit that no evidence appears in the Record to the effect that they ever intended or ever attempted to enter the jail. Respondent, indeed, states as follows later in its Response (RP. 8):

> "We agree that the only trespass was that upon the county property adjacent to the county jail proper. None of petitioners invaded the jail or any of its out-buildings. It seems clear that the trespass was committed entirely upon access routes and the adjacent lawns, approaches, walkways and other proximate areas."

Respondent also miscites the Record in asserting that a service truck operator was prevented from leaving in

his truck; no testimony at trial tended to establish that anyone who wished to enter or leave the jail was prevented from doing so by the demonstrators. Sheriff Joyce as well as Deputy Sheriff Dekle testified that the demonstrators moved back upon request.

Respondent unjustifiably relies on the alleged fact that Sheriff Joyce gave no "tacit permission" to remain near the jailhouse. Respondent omits any reference to the **explicit permission** given by Deputy Sheriff Dekle, i.e., the fact that the demonstrators obeyed his request as an officer of the county that they stay in the middle of the driveway and come no closer to the jail, and respondent totally ignores petitioners' obedience to the Sheriff's request that they move back. Respondent also overlooks Sheriff Joyce's 13 to 20 minute implied grant of permission to the demonstrators prior to his first announcements to the entire group, announcements which the evidence shows placed petitioners on the horns of a dilemma; i.e., being arrested for trespass or being arrested for resisting arrest!

Lastly, respondent contends that "the location of the county jail itself . . . clearly shows that their [petitioners'] demonstration was not calculated to reach either the hearts or souls of any respectable portion of the citizenry." (RP. 7) Would not the "respectable portion of the citizenry," to use respondent's language, read or hear of a peaceful public protest against jail segregation, discrimination in the Tallahassee theatres, and other State racial discrimination? Does not the "respectable portion of the citizenry" have access to radio, television, newspapers, word-of-mouth communication, etc., or are civil rights demonstrations excluded from com-

munication media? Are accused persons awaiting trial not "respectable?" Has the fundamental rule of "innocent until proven guilty" been abolished in Florida? Are all persons convicted of any and all crimes under any and all circumstances not "respectable?" Are persons improperly convicted or unconstitutionally convicted not "respectable?" Are Sheriff Joyce and his deputies not "respectable"?

Petitioners submit that the area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate because (1) petitioners believed that the persons arrested the day before for peacefully protesting the racially discriminatory movie theatre admissions policy were incarcerated in the Leon County jail, as apparently some were, and (2) the jail itself was and is a prime example of State-enforced racial segregation under State law in a public facility. To counsel's best knowledge, the first case in Florida holding racially segregated jails in accordance with Florida Statutes secs. 945.05-954.08 unconstitutional is **Ferguson v. Buchanan as Sheriff of Dade County**, unreported, Case #64-107, U. S. District Court for the Southern District of Florida, Miami Division, in which the Summary Decree was filed on March 16, 1965. Compliance with the Decree by total desegregation of the Dade County jail was acknowledged by plaintiffs in the **Ferguson** case file as of November 15, 1965, over two years after the demonstration involved in the case at bar.

II.

THE DOCTRINE OF ABATEMENT IS APPLICABLE TO PETITIONERS' CONVICTIONS

The Petition (P. 14) relies on Hamm v. City of Rock Hill, 1964, 379 U. S. 306, 85 S. Ct. 384, 13 L. Ed. 2d 300, Blow v. North Carolina, 1965, 379 U. S. 684, 85 S.Ct. 635, 13 L. Ed. 2d 603, and McKinnie v. Tennessee, 1965, 380 U. S. 449, 85 S. Ct. 1101, 14 L. Ed. 2d 151, as rendering the doctrine of abatement applicable to the convictions herein sought to be reversed.

Respondent tries to distinguish the Hamm case on the ground that "a jail is not a place of public accommodation . . . covered by the 1964 Civil Rights Act" (RP. 14). Petitioners do not contend that it is. The Tallahassee downtown movie theatres, however, are places of public accommodation covered by the Act and petitioners' demonstration was part and parcel of an attempt to peacefully desegregate said theatres by picketing. One purpose of petitioners' demonstration was to peacefully protest the prior arrest of fellow demonstrators who had unsuccessfully sought admission to said theatres free from racial discrimination.

III.

PETTY CRIMINAL STATUTES MAY NOT BE USED TO VIOLATE MINORITIES' CONSTITUTIONAL RIGHTS

The Petition (P. 14-15) cites numerous cases in which this Court has prescribed the uses of petty criminal statutes for the purpose of violating minorities' constitutional rights, including the Edwards and Cox cases supra, Peterson v. Greenville, 1963, 375 U. S. 244, 83 S. Ct. 1119, 10 L. Ed. 2d 323, and Thompson v. Louisville, 1960, 362 U. S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654. As respondent made no argu-

ment on this point (RP. 8) additional to its fallacious ones already discussed by petitioners in sections I and II, supra, suffice to state that the Summary of Evidence and Preface herein clearly establish the unconstitutional purpose of petitioners' arrests and convictions.

IV.

PETITIONERS' CONVICTIONS ARE BASED ON A TOTAL LACK OF RELEVANT EVIDENCE

The Petition (P. 15) set forth petitioners' contention that their convictions violated the Fourteenth Amendment's due process clause as no evidence whatsoever of "trespass . . . committed with a malicious and mischievous intent" appears in the Record.

Respondent urges that the total-lack-of-relevant-evidence rule of Garner v. Louisiana, 1961, 368 U. S. 157, 82 S. Ct. 248, 7 L. Ed. 2d 207, is inapplicable in the case at bar because Sheriff Joyce subsequently notified petitioners that their refusal to leave "would result in their arrest and prosecution for trespass" (RP. 9). Respondent thus concedes that "it may be correct to say that the property upon which Petitioners conducted their alleged protest was open to the public" (RP. 9), but again ignores Deputy Sheriff Dekle's original grant of permission to demonstrate up to the middle of driveway and relies on the Sheriff's withdrawal of prior permission to establish trespass. The Cox case, supra, 13 L. Ed. 2d at 496, 497 reveals the constitutional inability of such evidence to establish trespass.

With reference to the second requirement of the trespass statute involved, respondent states that the requisite malicious-and-mischievous-intent is evidenced by "the intentional doing of an act (in this case trespass) without just cause or excuse" (RP. 10). Assuming arguendo that the evidence in the case at bar establishes an intentional trespass, contrary to petitioners' position, it seems clear that petitioners did not act "without just cause or excuse" in view of state-enforced segregation in the downtown movie theatres as well as the jail itself, the fact that some demonstrators arrested the prior day were being kept inside the jail, the peaceful and orderly nature of petitioners' demonstration, the police officer's original grant of permission to demonstrate to the middle of the driveway, petitioners' obedience in going no further than the point designated in such grant of permission, etc.

Respondent states that "petitioners urge that public property is at their unbridled disposal as a forum to air grievances" (RP. 10). Petitioners take this opportunity to completely disavow any such position. The jail itself is on public property and petitioners neither intended nor attempted to go into the jail. Petitioners merely intended and attempted to use public property "open to the public" for peaceful freedom of expression. Respondent itself concedes that the areas involved, adjacent to the jail, appeared to be so "open to the public" and were so "open to the public," at least until Sheriff Joyce revoked the prior grant of permission to demonstrate (a revocation petitioners deem ineffective). The case at bar in no way involves "civil disobedience" in the sense of a deliberate violation of law. Petitioners sought to peacefully demonstrate by walking to the jail and then standing near it, singing Freedom songs, clapping their hands, etc. Peti-

tioners did not seek to demonstrate by deliberately violating a law.

The demonstration in question took place over two years ago. Those two years have seen the passage of the 1964 Civil Rights Act and an end to state-enforced or encouraged racial discrimination in some instances in some parts of the State of Florida. Respondent's Response indicates that the battle is not yet over. Petitioners submit that the demonstration in the case at bar was more than reasonable under the circumstances then prevailing, was thus constitutionally-protected freedom of expression, and in no way evidenced any trespass-with-a-malicious-and-mischievous intent.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that the judgments below should be reversed and Petitioners' convictions vacated.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, RICHARD YALE FEDER, Counsel for Petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on August ____, 1966, I served copies of the foregoing Brief for Petitioners on the Respondent by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to each of the following, to wit, WILLIAM D. ROTH, Assistant Attorney General of the State of Florida, P.O. Box AQ, 1105 East Memorial Boulevard, Lakeland, Florida 33802, WILLIAM D. HOPKINS, State Attorney, Attorney for Respondent, Lewis Bank Building, Tallahassee, Florida, and EARL FAIRCLOTH, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 19

HARRIETT LOUISE ADDERLEY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

BRIEF OF RESPONDENT

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NO. 19

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THE STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

BRIEF OF RESPONDENT

INTRODUCTION

Respondent adopts the same symbols as expressed in petitioners' brief for reference to the record in this cause.

OPINION BELOW

Respondent concedes that the pertinent opinion herein sought to be reviewed is that found in 175 So.2d 249, and that such opinion is accurately duplicated in the appendix of petitioners' petition.

QUESTION PRESENTED

WHETHER SECTION 821.18, FLORIDA STATUTES, BY VIRTUE OF ITS APPLICATION TO PETITIONERS IN THIS CASE, CONSTITUTES A VIOLATION OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS ASSURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

JURISDICTION

Respondent concedes that appropriate jurisdiction to entertain this proceeding is vested in this court pursuant to 28 U.S.C. 1257.

STATEMENT OF THE CASE

Petitioners were each charged with and adjudged guilty, after jury verdicts of conviction in the County Judge's Court of Leon County, of having committed a "trespass with malicious and mischievous intent upon . . . property owned by Leon County, a political subdivision of the State of Florida . . . being located at the Leon County jail; contrary to Section 821.18, Florida Statutes" (R. 76).

Thereafter, the Circuit Court in and for Leon County, Florida, affirmed the judgments and sentences of conviction of the County Judge's Court in and for Leon County, Florida (R. 75-81).

Whereupon, a petition for a common law writ of certiorari was sought in the District Court of Appeal, First District of Florida. The District Court in a decision reported at 175 So. 2d 249 denied said petition as well as petition for rehearing.

STATEMENT OF THE FACTS

Rather than accept petitioners' "Summary of Evidence" purporting to follow the facts as set forth in the opinion of the Circuit Court, it is respectively submitted that a more nearly objective statement thereof may be found within the confines of the court's order (R. 75-81).

To the extent that said recitation may not be so considered and if it should become necessary in respondent's discussion of the argument, appropriate corrections and/or additions thereto will be made.

ARGUMENT SUMMARY

Petitioners have presented one question to the court based on the following parts, to-wit:

(1) That they were denied their rights under the Fourteenth Amendment to freedom of speech, assembly, and petition;

(2) That the doctrine of abatement is applicable to petitioners' convictions;

(3) That criminal statutes may not be used to violate minorities' constitutional rights;

(4) That petitioners' convictions are based on a total lack of relevant evidence.

With regard to part (1), respondent's position is that the cases of *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S. Ct. 680, 9 L.Ed.2d 697, and the recent *Cox v. Louisiana* cases, 1965, 379 U.S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed.2d 471 and 487, relied on so heavily by petitioners are distinguishable and, therefore, not controlling upon the present case.

With regard to part (2), respondent urges that the doctrine of abatement with regard to the *1964 Civil Rights Act* is inapplicable to the present cause. Respondent submits that the convictions in this case are not part and parcel of any effort to seek to use places of public accommodation.

With regard to part (3), respondent will point out that Florida law was not used to violate petitioners' constitutional rights. Rather, the statute was applied to petioners in a fair and impartial manner.

Finally, in part (4), respondent urges that petitioners' convictions were based on adequate and competent evidence.

ARGUMENT

I

Petitioners' reliance on the cases of *Edwards v. South Carolina,* 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 and the *Cox v. Louisiana* cases, 1965, 379 U.S. 536 and 559, 85 S.Ct. 453 and 476, 13 L.Ed.2d 471 and 487, to support a reversal does not appear well founded when the cases are closely compared with the present case.

The *Edwards* case involved a conviction in South Carolina for the common-law crime of breach of the peace. The petitioners were arrested while presenting a protest to the citizens of South Carolina, and the state legislature which was in session at the time. The protest took place on the state house grounds and law enforcement officers had advance knowledge that petitioners were coming. The protest consisted of carrying placards bearing various messages of protest against segregation. After a half hour of peaceable marching on the state house grounds petitioners were advised to disperse within fifteen minutes or be arrested. Petitioners responded by singing certain

patriotic and religious songs and listening to a "religious harangue" by one of their leaders. Arrest and conviction ensued and this court ruled that the convictions violated the defendants' rights of free speech, free assembly, and freedom to petition for redress of grievances.

In the *Cox* cases the petitioners were convicted for breach of the peace, obstructing public passages and picketing near a courthouse. It is clear that the students were harassed from the inception of their march in that their leader as well as the drivers of their buses were arrested. The police officers had similarly learned of the proposed demonstrations. Upon reaching the corner of the capitol grounds Cox told the authorities about the nature of the protest. When the group reached an area directly across the street from the courthouse Cox was again confronted and responded with a statement of their program from a prepared text.

In the case here under consideration the arrests were made of persons in the driveway abutting the county jail. The first witness produced by the defense admitted that she neither carried nor saw any signs or placards of protest (R. 60). She also admitted that she neither made nor heard any statements made to the officers of the purpose of the demonstration. Sheriff Joyce testified of a conversation with two men who seemed to be the leaders of the group. It was the sheriff's testimony that these participants stated that they had come to be arrested when the sheriff asked them to leave the jail property (R. 30-31).

Further, Deputy Dawkins testified of remarks made by the group to their leader that they had come to the jail the previous evening in an unsuccessful attempt to be arrested and had returned and were now demanding to be arrested (R. 46). Dawkins also related that a Reverend Evans had cautioned the demonstrators that they could not arrest themselves (R. 47). It is at this point that Dawkins testified concerning a service truck operator and that certain of the demonstrators were sitting behind and leaning against his truck (R. 48). He further testified that the driver after finishing his duties came to the door to leave and then did not leave (R. 48). Respondent will speculate along with petitioners that there is no indication whether the driver could have left had he walked out and asked the persons to move. The record is silent of any communications made by the group, either visual or oral, concerning the grievance sought to be redressed.

Petitioners have pointed to numerous areas of civil rights in which Florida has correctly been "brought in line" by court decision. Petitioners have also cited many facts both within and without the record concerning the conditions that existed in Tallahassee at the time of their arrests. Assuming everything said in this regard as true, one must wonder at just where it fits into the matters properly before this court for determination.

It is correct that the demonstrators carried no weapons. It is correct that the demonstrators exhibited no violence. It is correct that they did not disturb the citizenery of the City of Tallahassee—indeed the choice of the site for the demonstration made that virtually impossible. It

is here observed that there existed the great possibility that a number of the inmates of the jail proper were disturbed (R. 9) and that because of the demonstration the routine of the jail and the usual calm were as well disturbed.

It is difficult, if not impossible, to believe that they really meant to make an effective protest in the presence of no one but county jail inmates and the necessary penal personnel. Without pretending to advise petitioners of the locale they should have selected, it must be at once apparent that the choice they in fact made flies into the teeth of what they say was their announced purpose. Sheriff Joyce's testimony is replete with sworn assurances that no one on the public sidewalks or any other areas customarily used by the pedestrian public was either arrested or molested. Indeed, the very fact that the demonstrators were not arrested or harrassed on their way to the jail is at least evidence of the fact that the City of Tallahassee, the County of Leon and the State of Florida are well aware that public thoroughfares are free to be used by persons seeking to air grievances.

Petitioners take great delight in pointing out to this court that the respondent has said that they are not respectable. Respondent had always understood that one of the well-used and acceptable meanings of that word is "fair in size or quantity." Lest there be any further doubt at this juncture suffice, it to say that respondent was referring specifically to numbers and apologizes if any other meaning was gleaned from its use.

Petitioners take great care in explaining how the facts in *Edwards* and the *Cox* cases concerning granting and then revoking permission to protest relate to the facts in the present case. In both *Edwards* and *Cox* it is clear that the demonstrators were explicitly allowed to conduct their programs of protest and then said permission was withdrawn. In the case here under consideration the record reveals that the jailer met the unannounced crowd as it proceeded to within a foot of the jail steps. Jailer Dekle testified that no vehicles could have used the driveway to proceed directly in front of the jail entrance and he related that the entrance was primarily used by vehicles for bringing persons and supplies to jail (R. 20). This contention is not rebutted by the fact that Sheriff Joyce drove up because it was his testimony that he parked in the first parking area immediately off Gaines Street (R. 36). Further, it is clear that Sheriff Joyce gave no permission to the demonstrators to occupy the driveway. Petitioners contend in this regard that Sheriff Joyce gave an implied grant of permission and then revoked it. The record in this regard reveals that the sheriff upon arriving was busied with seeing about the security of the jail and that he then talked to two members of the group requesting them to disperse (R. 27-28). Respondent fails to gather any explicit or tacit permission from this conduct.

Respondent is puzzled as to just what the petitioners would have had the sheriff do when they refused to move after announcing it was their (the leaders') intention to be arrested.

Petitioners assert that the trespass statute, as construed and applied, violated their rights to freedom of expression

and equal protection and is, therefore, void for vagueness. As previously pointed out, it is clear that no person was arrested on the public sidewalks or any other areas customarily used by the pedestrian public. Further, there is no evidence that the sheriff had the unbridled discretion in the use of said statute. Finally, the record is silent of any communication to those at the jail concerning the purpose of their protest.

II

In their brief, petitioners admit that a jail is not a place of public accommodation but contend that the action at the jail "was part and parcel of an attempt to peacefully desegregate . . . theatres by picketing."

Also, in their Petition for a Writ of Certiorari their whole argument in this regard was that this case "really involves" demonstrations to seek admittance to places of public accommodation. However, a review of the record makes it clear that a trespass of the nature of the one at bar could be prosecuted today just as it was before the enactment of the *1964 Civil Rights Act.*

III

Petitioners have cited several cases that stand for the general proposition that petty criminal statutes cannot be used for the purpose of denying constitutional rights of minorities. However, there was no attempt either in the

petition or the brief to point out just how that proposition is applicable to the present case.

IV

Petitioners again contend that they were given an original grant of permission to demonstrate and that the sheriff's withdrawal was ineffective. The record reveals no grant or withdrawal of permission.

Petitioners also urge that the trespass was not "without just cause or excuse." The very fact that they selected the county property immediately adjacent to the jail proper clearly shows that their purpose was not simply to protest social wrongs or indeed laws which they felt were incorrect. When this is considered with the fact that certain of their leaders stated that their announced purpose was to be arrested it becomes clear that the act was committed without just cause or excuse.

The fact that the provocations may have been themselves constitutionally unlawful cannot justify unlawful means for their resolution. Both types of conduct are wrong and obviously two wrongs cannot make a right.

Respondent concedes it would be preferable to have someone or some group of persons able to state with some particularity and certainty that each of the petitioners not only did trespass, but were arrested therefor. This would seldom, if ever, be possible when a group as large as this is involved. However, it may be fairly deduced from the record in this case that on the scene at the time

in question all the demonstrators who were on county jail property adjacent to the jail proper were ringed with police officers and that from announcement by the sheriff that they were under arrest after he had ordered them to leave, the ring of police officers simply closed around them. Within the persons arrested the present petitioners could have been and were compared to the arrest records and so identified as co-perpetrators of the trespass in question.

Quite apart from the above and to the extent that petitioners urge that public property is at their unbridled disposal as a forum to air grievances, it is respectfully submitted that the federal law specifically prohibits such activity in and about the region of the Supreme Court of the United States. Section 13k of Title 40 of United States Code reads as follows:

> "§ 13k. *Same; parades or assemblages; display of flags*
> It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. Aug. 18, 1949, c. 479, § 6, 63 Stat. 617"

To like general effect is Section 401 of Title 18 of the United States Code which addresses itself to the misbehavior of any person in the presence of a court of the

United States or so near thereto as to obstruct the administration of justice.

By analogy, may it not be fairly concluded that if the quiet processes of federal judicial labors may not be abridged by activities such as those involved here, surely the supercharged atmosphere of a county penal institution should remain at least as insulated therefrom. We submit that objectivity commands an affirmative answer.

CONCLUSION

Wherefore, it is concluded that not only was there no violation of free speech, assembly, petition, due process of law and equal protection of the laws assured by the Fourteenth Amendment, but that in fact the issues raised by the petition for writ of certiorari did not lie within the broad scope of reversible error.

WHEREFORE, this court is respectfully requested to quash the petition for writ of certiorari heretofore granted and affirm the judgment and sentence below.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

WILLIAM D. ROTH
Assistant Attorney General

Counsel for Respondent

PROOF OF SERVICE

I HEREBY CERTIFY that copies of the above and foregoing brief of respondent have been forwarded by mail this _____ day of September, 1966, to the following as members of counsel for petitioners:

Honorable Richard Yale Feder, 250 NE 17 Terrace, Miami, Florida, 33131, Honorable Tobias Simmon, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Herbert Heiken, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Joseph C. Segor, 311 Lincoln Road, Miami Beach, Florida, 33139, Honorable Irma Robbins Feder, 110 N. Hibiscus Drive, Miami Beach, Florida, 33139.

Of Counsel for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. [redacted] 19

HARRIETT LOUISE ADDERLEY, et al.,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

PETITION FOR REHEARING

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 506

HARRIETT LOUISE ADDERLEY, et al.,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT STATE OF FLORIDA

PETITION FOR REHEARING

Petitioners pray that this Court grant rehearing of its judgment of November 14, 1966, affirming the judgments and convictions below, and that upon such rehearing granted, the judgments and convictions below be reversed.

REASONS FOR GRANTING REHEARING AND REVERSING THE JUDGMENTS BELOW

Introductory Note—

Petitions are not seeking reconsideration of the basic constitutional principles set forth in the majority

opinion, but instead they seek to establish the inapplicability of the principles enunciated to the case at bar in view of apparently overlooked facts. While petitioners are of course in agreement with the dissenting opinion herein, this Petition for Rehearing is directed solely to three instances of specific language in the majority opinion (and consequent decision of affirmance) as required by this Court's Rules.

"MO" symbolizes the majority opinion, "P" the Petition for Writ of Certiorari, "RP" the State's Response thereto, "PB" the Brief for Petitioners, and "TR" the Transcript of Record. Emphasis in quoted material is added by counsel.

1. The majority opinion is apparently bottomed on the following statement appearing therein (MO. 2):

> "Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not."

Assuming this reasoning to be correct, it nevertheless has no application to the within case because there was no attempt to enter the jail as opposed to jail grounds, the grounds in question were open to the public both by absence of signs and by tradition, and petitioners were expressly invited by Chief Jailer Dekle to continue their assembly on the open-to-the-public area.

Distinguishing in the majority opinion between "state capitol grounds" and "[j]ails" overlooks the fact that petitioners in this case at bar did not enter the jail building itself at any time prior to their arrest and obeyed all official requests or commands to move to other parts of the grounds outside the building. Subsequent reference to "the curtilage of the jailhouse" (MO. 8) may obscure but cannot change the fact, as stated by respondent-State of Florida (RP. 8), that "[n]one of petitioners invaded the jail or any of its outbuildings . . . [and all stayed] upon access routes and the adjacent lawns, approaches, walkways and other proximate areas." Which public

grounds are open to the public (and which are not so open) "[t]raditionally" is irrelevant in the case at bar. Tradition cannot alter or supplant respondent-State's implicit and explicit admission, in its Response to the Petition (RP. 9) and during oral argument before this Court on October 18, 1966, that the Leon County jailhouse "curtilage" was open to the general public when petitioners walked thereon in a peaceful orderly manner.

The assertion in the majority opinion that "[j]ails . . . [are] built for security purposes" cannot be extended to the areas upon which petitioners were located when counsel for respondent-State informed this Court that the areas in question are used similarly to city streets; in answer to this Court's questions posed during oral argument, counsel for respondent-State said that members of the general public, including he himself, used such areas to walk from one building to another with no interference and no intimation that such use was not allowed. When the State's Assistant Attorney General concedes that the areas in question were used by the general public in the same manner as the city streets, and when the record reveals no fence, sign, or other device indicating special treatment of the property involved, it is clear that the Leon County jail "curtilage" was not built for security purposes.

Finally, upon petitioners' arrival on the jail grounds, they were told to go to a particular area by Chief Jailer Dekle (TR. 10). This was not only an express approval of their presence on the area indicated, an area to which they immediately went, but certainly a complete negation of the lack-of-permission-to-enter element essential to a trespass conviction, as well as a similarly complete negation of "security purposes" requiring petitioners to leave the entire grounds.

2. The majority opinion also rests on the following sentence contained therein (MO. 8):

"Nothing in the Constitution of the United

States prevents Florida from even-handed enforcement of its general trespass statute against those refusing to obey the Sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse."

The sentence obviously sets forth a basic principle of constitutional law concerning "even-handed" law enforcement, but its application in the case at bar overlooks several facts. The **sole** prior Florida case citing the statute involved, Florida Statute sec. 821.18 (and its predecessors dating back to 1892) is **Cannon v. State**, 1931, 102 Fla. 928, 136 So. 695, in which the Florida Supreme Court reversed a conviction for breaking-and-entering-a-dwelling-house-with-intent-to-commit-a-misdemeanor, said misdemeanor being to trespass-upon-the-property-of-another-with-a-malicious-and-mischievous-intent (under sec. 821.18's predecessor). The Florida Supreme Court based its decision on lack of proof that the tenant did not give defendant permission to enter and therefore, at p. 696, found it unnecessary to decide whether the information was insufficient to charge a crime because trespass was a common element of breaking and entering as well as of the intended misdemeanor. This **Cannon v. State** one-paragraph **dicta** is the only reported comment on sec. 821.18 or its predecessors until the instant case. The majority opinion thus predicates Florida's "even-handed enforcement of its general trespass statute" on an utter absence of reported convictions—but for petitioners'.

Moreover, the only Florida case involving sec. 821.18 in any manner dealt with "private" rather than "public property." Never before in Florida's reported case history has anyone been charged, let alone convicted, of trespassing or intending to trespass "upon the property of another" which was public property, leastwise public property to which he had been invited by community tradition as well as the public official then in charge. And in **Cannon v. State, supra**, the conviction for breaking and entering was upset by a lack of proof of denial of per-

mission to enter, cf. **Bouie v. Columbia**, 378 U.S. 347. In the case at bar, respondent-State admitted that there was no trespass when petitioners arrived on the jail grounds as they had every right to be in this open-to-the-public area. If petitioners committed no trespass in entering the area, nor in peacefully protesting thereon for about a half-hour, their activity could not thereafter become a trespass by the unilateral whim of a sheriff, a sheriff not acting under "a law reasonably limiting the periods during which" the jail grounds were open to be public, cf. **Edwards v. South Carolina**, 372 U.S. 229, 236, but acting instead under a general trespass statute never before used under similar circumstances. The sheriff's actions cannot come within "even-handed" law enforcement.

In addition, the majority opinion's explicit recognition (MO. 1) that petitioners were protesting "because of arrests of other protesting students the day before, and perhaps to protest more generally against state and local policies and practices of racial segregation, including segregation of the jail" in and of itself shows uneven-handed enforcement of sec. 821.18 by the trial court which (1) informed the Jury Panel the case did not involve "segregation" or any "attempt . . . to integrate anything" (TR. 6), (2) refused to charge the jury that "the State may not lawfully prevent persons from peacefully protesting the denial of constitutional liberties under the guise of enforcing a trespass statute" (TR. 69), and (3) sentenced petitioners as follows (a certified copy thereof having been sent to this Court by certified mail on October 28, 1966 pursuant to this Court's request of counsel at oral argument):

> "$50.00 or 30 days and 30 days mandatory. Mandatory sentence suspended upon good behavior. Good behavior includes no participating in any demonstrations in Leon County tending to create racial strife."

In other words, the trial court ordered the jury to disre-

gard the purpose of petitioners' peaceful protest and then used its verdict of guilty as a weapon in the battle to preserve Florida's then-existing laws, practices and policies of racial discrimination.

The majority opinion (MO. 8) appears to find "even-handed enforcement" because the sheriff would or could have applied the trespass statute to a group of white Tallahassee citizens assembled similarly to petitioners. But such a group would not and did not protest State racial discrimination in the Tallahassee downtown movie theatres and the Leon County jail in 1963. Although Florida's compulsory jail segregation law and other racially discriminatory laws encompassed both Negroes and whites, **McLaughlin v. Florida**, 379 U.S. 184, demolished the argument that such laws apply equally to both races. How then can misuse of a trespass statute to break up a peaceful assembly of Negroes seeking an end to State discrimination be deemed "even-handed enforcement"?

3. The majority opinion rejects what it characterizes as petitioners' "major unarticulated premise" and holds as follows (MO. 9):

> " . . . people who want to propagandize protests or views [do not] have a constitutional right to do so whenever and however and wherever they please."

Petitioners do not object to such holding as a matter of constitutional law, but do seriously deny its applicability in the case at bar. The misstatement of "petitioners' argument" (MO. 8-9) includes a truncated quotation from petitioners' Brief (PB. 20) which was taken out of context.[1] The misstatement cannot change the following facts: petitioners were protesting State-enforced and State-encouraged racial discrimination in September of 1963 (the "whenever" factor); petitioners conducted their

[1] Although quotation from counsel's brief is normally deemed an honor, this instance represents an exception to the general rule.

protest in a peaceful and orderly manner (the "however" factor); and petitioners chose a site concededly then open to the general public, namely the "curtilage" of the jail in which fellow-peaceful-protesters were being held in a racially segregated manner prescribed by State law[2] (the "wherever" factor).

The effect of a State's racial discrimination in determining constitutional rights, and in rendering citizens' otherwise-prohibited conduct constitutionally protected, has been applied by this Court in numerous cases including **NAACP v. Alabama**, 357 U.S. 449, **Peterson v. Greenville**, 373 U.S. 244, and **Robinson v. Florida**, 378 U.S. 153.

The apparently magic word "trespass" cannot erase or eliminate the significance of the special circumstances surrounding petitioners' protest. Similarly, the statutory words "with a malicious and mischievous intent" may well "narrow the scope of the offense" (MO. 4) under ordinary circumstances, but such words and interpretation **broaden** the scope of the offense in the case at bar when permitted to exclude consideration of the purpose of petitioners' peaceful protest, i.e., to bring an end to Florida's racially discriminatory laws, practices and policies. The majority opinion early recognizes petitioners' purpose (MO. 1), but later ignores said purpose as well as then-existing conditions in Florida (P. 10, PB. 14-15). By upholding the finding that petitioners' had "a malicious and mischievous intent" as said statutory language was interpreted by the trial court, the majority opinion equates petitioners' undisputed intent to end State racial discrimination through nonviolent orderly assembly[3] [redacted] with an intent to tres-

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[2]Apparently the first case holding Florida Statutes sec. 945.08 unconstitutional was decided on March 16, 1965 (PB. 20), desegregation of the *Dade* County jail occurred on November 15, 1965 and repeal of the statute took effect on July 1, 1965 (Laws 1965, c 65-172, sec. 2).

[3]The majority opinion notes that petitioners carried no signs and made no speeches (MO. 6). Petitioners suggest that the color of their skin spoke for itself and was clear sign of the purpose of their peaceful protest in Tallahassee in 1963.

pass "without excuse or justification" and to trespass "to cause petty and trivial trouble, annoyance and vexation to others" (MO. 4). Surely petitioners' choice of time, place, and method of peaceful assembly, protest, and petition demonstrates not only their courage in challenging State racial discrimination, but also their wisdom in refraining from deliberate civil disobedience.

Petitioners suggest that elevating the **Cox dicta** negating any constitutional right to protest "whenever and however and wherever" one pleases (MO. 9) to **holding** may be of assistance in preserving the rule of law, the principle of justice through law basic to our American jurisprudence. Such holding may forestall future threats of anarchy, violence, and chaos when and if the proper case for such holding comes before this Court. Petitioners respectfully submit that **Adderley v. Florida** does not present the proper case for such holding.

CONCLUSION

For the reasons set forth above (as well as in the petition for certiorari and brief for petitioners heretofore filed), it is respectfully urged that rehearing be granted and that, upon such rehearing, the judgments and convictions below be reversed.

Respectfully submitted,

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Attorneys for Petitioners

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay.

(by) RICHARD YALE FEDER

CERTIFICATE OF SERVICE

I, RICHARD YALE FEDER, Counsel for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on December 6, 1966, I served copies of the foregoing Petition for Rehearing on the Respondent by mailing a copy thereof in a duly addressed envelope with airmail postage prepaid to each of the following, to wit: William D. Roth, Assistant Attorney General of the State of Florida, P. O. Box AQ, 1105 East Memorial Boulevard, Lakeland, Florida 33802; William D. Hopkins, State Attorney, Attorney for Respondent, Lewis Bank Building, Tallahassee, Florida; and Earl Faircloth, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

RICHARD YALE FEDER
Attorney for Petitioners

SUPREME COURT OF THE UNITED STATES

No. 19.—October Term, 1966.

Harriett Louise Adderley et al., Petitioners, v. State of Florida.	On Writ of Certiorari to the District Court of Appeal of Florida, First District.

[November 14, 1966.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners, Harriett Louise Adderley and 31 other persons, were convicted by a jury in a joint trial in the County Judge's Court of Leon County, Florida, on a charge of "trespass with a malicious and mischievous intent" upon the premises of the county jail contrary to § 821.18 of the Florida statutes set out below.[1] Petitioners, apparently all students of the Florida A. & M. University in Tallahassee, had gone from the school to the jail about a mile away, along with many other students, to "demonstrate" at the jail their protests because of arrests of other protesting students the day before, and perhaps to protest more generally against state and local policies and practices of racial segregation, including segregation of the jail. The county sheriff, legal custodian of the jail and jail grounds, tried to persuade the students to leave the jail grounds. When this did not work, he notified them that they must leave, notified them that they must leave or he would arrest them for trespassing, and notified them further that if they resisted arrest he

[1] "Every trespass upon the property of another, committed with a malicious and mischievous intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars." Fla. Stat. § 821.18 (1965).

would arrest them for resisting arrest as well. Some of the students left but others, including petitioners, remained and they were arrested. On appeal the convictions were affirmed by the Florida Circuit Court and then by the Florida District Court of Appeals, 175 So. 2d 249. That being the highest state court to which they could appeal, petitioners applied to us for certiorari contending that, in view of petitioners' purpose to protest against jail and other segregation policies, their conviction denied them "rights of free speech, assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States." On this "Question Presented" we granted certiorari. 382 U. S. 1023. Petitioners present their argument on this question in four separate points, and for convenience we deal with each of their points in the order in which they present them.

I.

Petitioners have insisted from the beginning of these cases that they are controlled and must be reversed because of our prior cases of *Edwards* v. *South Carolina*, 372 U. S. 229, and *Cox* v. *Louisiana*, 379 U. S. 536, 559. We cannot agree.

The *Edwards* case, like this one, did come up when a number of persons demonstrated on public property against their State's segregation policies. They also sang hymns and danced, as did the demonstrators in this case. But here the analogies to this case end. In *Edwards*, the demonstrators went to the South Carolina State Capitol grounds to protest. In this case they went to the jail. Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not. The demonstrators at the South Carolina Capitol went in through a public driveway and as they entered they were told by state officials there that they had a right

as citizens to go through the State House grounds as long as they were peaceful. Here the demonstrators entered the jail grounds through a driveway used only for jail purposes and without warning to or permission from the sheriff. More importantly, South Carolina sought to prosecute its State Capitol demonstrators by charging them with the common-law crime of breach of the peace. This Court in *Edwards* took pains to point out at length the indefinite, loose, and broad nature of this charge; indeed, this Court pointed out at p. 237, that the South Carolina Supreme Court had itself declared that the "breach of the peace charge" is "not susceptible of exact definition." South Carolina's power to prosecute, it was emphasized at p. 236, would have been different had it proceeded under a "precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed" such as, for example, "limiting the periods during which the State House grounds were open to the public . . . ." The South Carolina breach-of-the-peace statute was thus struck down as being so broad and all-embracing as to jeopardize speech, press, assembly and petition, under the constitutional doctrine enunciated in *Cantwell* v. *Connecticut*, 310 U. S. 296, 307–308, and followed in many subsequent cases. And it was on this same ground of vagueness that in *Cox* v. *Louisiana*, *supra*, at 551–552, the Louisiana breach-of-the-peace law used to prosecute Cox was invalidated.

The Florida trespass statute under which these petitioners were charged cannot be challenged on this ground. It is aimed at conduct of one limited kind, that is for one person or persons to trespass upon the property of another with a malicious and mischievous intent. There is no lack of notice in this law, nothing to entrap or fool the unwary.

Petitioners seem to argue that the Florida trespass law is void for vagueness because it requires a trespass

to be "with a malicious and mischievous intent . . . ." But these words do not broaden the scope of trespass so as to make it cover a multitude of types of conduct as does the common-law breach-of-the-peace charge. On the contrary, these words narrow the scope of the offense. The trial court charged the jury as to their meaning and petitioners have not argued that this definition, set out below,[2] is not a reasonable and clear definition of the terms. The use of these terms in the statute, instead of contributing to uncertainty and misunderstanding, actually makes its meaning more understandable and clear.

II.

Petitioners in this Court invoke the doctrine of abatement announced by this Court in *Hamm* v. *City of Rock Hill*, 379 U. S. 306. But that holding was that the Civil Rights Act of 1964, 78 Stat. 241, which made it unlawful for places of public accommodation to deny service to any person because of race, effected an abatement of prosecutions of persons for seeking such services that arose prior to the passage of the Act. But this case in no way involves prosecution of petitioners for seeking service in establishments covered by the Act. It involves only an alleged trespass on jail grounds—a trespass

[2] "'Malicious' means wrongful, you remember back in the original charge, the State has to prove beyond a reasonable doubt there was a malicious and mischievous intent. The word 'malicious' means that the wrongful act shall be done voluntarily, unlawfully, and without excuse or justification. The word 'malicious' that is used in these affidavits does not necessarily allege nor require the State to prove that the defendant had actual malice in his mind at the time of the alleged trespass. Another way of stating the definition of 'malicious' is by 'malicious' is meant the act was done knowingly and willfully and without any legal justification.

"'Mischievous,' which is also required, means that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others in order for you to find that the alleged trespass was committed with mischievous intent." R. 74.

which can be prosecuted regardless of the fact that it is the means of protesting segregation of establishments covered by the Act.

III.

Petitioners next argue that "petty criminal statutes may not be used to violate minorities' constitutional rights." This of course is true but this abstract proposition gets us nowhere in deciding this case.

IV.

Petitioners here contend that "Petitioners' convictions are based on a total lack of relevant evidence." If true, this would be a denial of due process under *Garner* v. *Louisiana*, 368 U. S. 157, and *Thompson* v. *City of Louisville*, 362 U. S. 199. Both in the petition for certiorari and in the brief on the merits petitioners state that their summary of the evidence "does not conflict with the facts contained in the Circuit Court's opinion" which was in effect affirmed by the District Court of Appeals. 175 So. 2d 249. That statement is correct and petitioners' summary of facts as well as that of the Circuit Court show an abundance of facts to support the jury's verdict of guilty in these cases.

In summary both these statements show testimony ample to prove this: Disturbed and upset by the arrest of their schoolmates the day before, a large number of Florida A. & M. students assembled on the school grounds and decided to march down to the county jail. Some apparently wanted to get themselves put in jail too, along with the students already there.[3] A group of

[3] The three petitioners who testified insisted that they had not come to the jail for the purpose of being arrested. But both the sheriff and a deputy testified that they heard several of the demonstrators present at the jail loudly proclaim their desire to be arrested. Indeed, this latter version is borne out by the fact that, though assertedly protesting the prior arrests of their fellow students

around 200 marched from the school and arrived at the jail singing and clapping.[4] They went directly to the jail door entrance where they were met by a deputy sheriff, evidently surprised by their arrival. He asked them to move back, claiming they were blocking the entrance to the jail and fearing that they might attempt to enter the jail. They moved back part of the way, where they stood or sat, singing, clapping and dancing, on the jail driveway and on an adjacent grassy area upon the jail premises. This particular jail entrance and driveway were not normally used by the public, but by the sheriff's department for transporting prisoners to and from the courts several blocks away and by commercial concerns for servicing the jail. Even after their partial retreat, the demonstrators continued to block vehicular passage over this driveway up to the entrance of the jail.[5] Someone called the sheriff who was at the moment apparently conferring with one of the state court judges about incidents connected with prior arrests for demonstrations.

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and the city's segregation policies, none of the demonstrators carried any signs and upon arriving at the jail, no speeches or other verbal protests were made.

[4] There is no evidence that any attempt was made by law enforcement officers to interfere with this march, or for that matter, that such officers even knew of the march or its ultimate destination.

[5] Although some of the petitioners testified that they had no intention of interfering with vehicular traffic to and from the jail entrance and that they noticed no vehicle trying to enter or leave the driveway, the deputy sheriff testified that it would have been impossible for automobiles to drive up to the jail entrance and that one serviceman, finished with his business in the jail, waited inside because the demonstrators were sitting around and leaning against his truck parked outside. The sheriff testified that the time the demonstrators were there, between 9:30 and 10 a. m. Monday morning, was generally a very busy time for using the jail entrance to transport weekend inmates to the courts and for tradesmen to make service calls on the jail.

When the sheriff returned to the jail, he immediately inquired if all was safe inside the jail and was told it was. He then engaged in a conversation with two of the leaders. He told them that they were trespassing upon jail property and that he would give them 10 minutes to leave or he would arrest them. Neither of the leaders did anything to disperse the crowd, and one of them told the sheriff that they wanted to get arrested. A local minister talked with some of the demonstrators and told them not to enter the jail, because they could not arrest themselves, but just to remain where they were. After about 10 minutes, the sheriff, in a voice loud enough to be heard by all, told the demonstrators that he was the legal custodian of the jail and its premises, that they were trespassing on county property in violation of the law, that they should all leave forthwith or he would arrest them, and that if they attempted to resist arrest, he would charge them with that as a separate offense. Some of the group then left. Others, including all petitioners, did not leave. Some of them sat down. In a few minutes, realizing that the remaining demonstrators had no intention of leaving, the sheriff ordered his deputies to surround those remaining on jail premises and placed them, 107 demonstrators, under arrest. The sheriff unequivocally testified that he did not arrest any person other than those who were on the jail premises. Of the three petitioners testifying, two insisted that they were arrested before they had a chance to leave, had they wanted to, and one testified that she did not intend to leave. The sheriff again explicitly testified that he did not arrest any person who was attempting to leave.

Under the foregoing testimony the jury was authorized to find that the State had proven every essential element of the crime, as it was defined by the state court. That

interpretation is, of course, binding on us, leaving only the question of whether conviction of the state offense, thus defined, unconstitutionally deprives petitioners of their rights to freedom of speech, press, assembly or petition. We hold it does not. The sheriff, as jail custodian, had power, as the state courts have here held, to direct that this large crowd of people get off the grounds. There is not a shred of evidence in this record that this power was exercised, or that its exercise was sanctioned by the lower courts, because the sheriff objected to what was being sung or said by the demonstrators or because he disagreed with the objectives of their protest. The record reveals that he objected only to their presence on that part of the jail grounds reserved for jail uses. There is no evidence at all that on any other occasion had similarly large groups of the public been permitted to gather on this portion of the jail grounds for any purpose.[6] Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trespass statute against those refusing to obey the sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional

[6] In *Cox* v. *Louisiana*, *supra*, at 558, the Court emphasized: "It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is 'exercised with "uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination" . . . [and with] a "systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways . . ."'"

right to stay on the property, over the jail custodian's objections, because this "area chosen for the peaceful civil rights demonstration was not only 'reasonable' but also particularly appropriate . . . ." Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightfully rejected in two of the cases petitioners rely on, *Cox* v. *Louisiana*, *supra*, at 554–555 and 563–564.[1] We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.

These judgments are

Affirmed.

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[1] "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. . . . A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations." 379 U. S., at 554–555.

"The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited." *Id.*, at 563.

SUPREME COURT OF THE UNITED STATES

No. 19.—October Term, 1966.

Harriett Louise Adderley et al., Petitioners, v. State of Florida.	On Writ of Certiorari to the District Court of Appeal of Florida, First District.

[November 14, 1966.]

Mr. Justice Douglas, with whom The Chief Justice, Mr. Justice Brennan, and Mr. Justice Fortas concur, dissenting.

The First Amendment, applicable to the States by reason of the Fourteenth (*Edwards* v. *South Carolina*, 372 U. S. 229, 235), provides that "Congress shall make no law respecting . . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances." These rights, along with religion, speech, and press, are preferred rights of the Constitution, made so by reason of that explicit guarantee and what Edmond Cahn in Confronting Injustice (1966) referred to as "The Firstness of the First Amendment."[1] With all respect,

[1] "Where would we really find the principal danger to civil liberty in a republic? Not in the goverpors as goverpors, not in the governed as governed, but in the governed unequipped to function as governors. The chief enemies of republican freedom are mental sloth, conformity, bigotry, superstition, credulity, monopoly in the market of ideas, and utter, benighted ignorance. Relying as it does on the consent of the governed, representative government cannot succeed unless the community receives enough information to grasp public issues and make sensible decisions. As lights which may have been enough for the past do not meet the needs of the present, so present lights will not suffice for the more extensive and complex problems of the future. Heretofore public enlightenment may have been only a manifest desideratum; today it constitutes an imperative necessity. The First Amendment, says Justice Black, 'reflects the faith that a good society is not static but advancing, and that the fullest possible interchange of ideas and beliefs is essential to attainment of this goal.'" (From *Feldman* v. *United States*, 322 U. S. 487, 501, dissenting opinion.) Cahn, *supra*, p. 102.

therefore, the Court errs in treating the case as if it were an ordinary trespass case or an ordinary picketing case.

The jailhouse, like an executive mansion, a legislative chamber, a courthouse, or the statehouse itself (*Edwards* v. *South Carolina*, *supra*) is one of the seats of government whether it be the Tower of London, the Bastille, or a small county jail. And when it houses political prisoners or those whom many think are unjustly held, it is an obvious center for protest. The right to petition for the redress of grievances has an ancient history [1] and

[1] The historical antecedents of the right to petition for the redress of grievances run deep, and strike to the heart of the democratic philosophy. C. 61 of the Magna Carta provided:

"That if we, our justiciary, our baliffs, or any of our officers, shall in any circumstances have failed in the performance of them toward any person, or shall have broken through any of these articles of peace and security, and the offence shall be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay."

The representatives of the people vigorously exercised the right in order to gain the initiative in legislation, and a voice in their government. See Pollard, The Evolution of Parliament 329–331 (1920). By 1669 the House of Commons had resolved that "it is an inherent right of every commoner of England to prepare and present Petitions to the house of commons in case of grievances," and "That no court whatsoever hath power to judge or censure any Petition presented . . . ." 4 Parl. Deb. (1st ser. Corbbet) 423–433 (1669). The Bill of Rights of 1689 provided "That it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal." Adams & Stephens, Select Documents of English Constitutional History, 464. The right to petition for a redress of grievances was early asserted in the Colonies. The Stamp Act Congress of 1765 declared "That it is the right of the British subjects in these colonies to petition the King or either House of Parliament." Sources of Our Liberties 271 (Perry ed. 1959). The Declaration and Resolves of the First Continental Congress, adopted October 14, 1774, declared that Americans "have a right peaceably to assemble, consider their grievances, and petition

is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to the President or Governor or Mayor. See *NAACP* v. *Button*, 371 U. S. 415, 429–431. Conventional methods of petitioning may be, and often have been, shut off to large groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly. Those who do not control television and radio, those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as long as the assembly and petition are peaceable, as these were.

There is no question that petitioners had as their purpose a protest against the arrest of Florida A. & M. students for trying to integrate public theatres. The sheriff's testimony indicates that he well understood the purpose of the rally. The petitioners who testified unequivocally stated that the group was protesting the arrests, and state and local policies of segregation, including segregation of the jail. This testimony was not contradicted or even questioned. The fact that no one gave a formal speech, that no elaborate handbills were distributed, and that the group was not laden with signs would seem to be immaterial. Such methods are not the *sine qua non* of petitioning for the redress of grievances.

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the King; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal." *Id.*, at 288. The Declaration of Independence assigned as one of the reasons for the break from England the fact that "Our repeated Petitions have been answered only by repeated injury." The constitutions of four of the original States specifically guaranteed the right. Mass. Const., Art. 19 (1780); Pa. Const., Art IX, 20 (1790); N. H. Const., Art. 32 (1784); N. C. Const., Art. 18 (1776).

The group did sing "freedom" songs. And history shows that a song can be a powerful tool of protest. See *Cox v. Louisiana*, 379 U. S. 536, 546–548. There was no violence; no threats of violence; no attempted jail break; no storming of a prison; no plan or plot to do anything but protest. The evidence is uncontradicted that the petitioners' conduct did not upset the jailhouse routine; things went on as they normally would. None of the group entered the jail. Indeed, they moved back from the entrance as they were instructed. There was no shoving, no pushing, no disorder or threat of riot. It is said that some of the group blocked part of the driveway leading to the jail entrance. The chief jailer to be sure testified that vehicles would not have been able to use the driveway. Never did the students locate themselves so as to cause interference with persons or vehicles going to or coming from the jail. Indeed, it is undisputed that the sheriff and deputy sheriff, in separate cars, were able to drive up the driveway to the parking places near the entrance and that no one obstructed their path. Further, it is undisputed that the entrance to the jail was not blocked. And wherever the students were requested to move they did so. If there was congestion, the solution was a further request to move to lawns or parking areas, not complete ejection and arrest. The claim is made that a tradesman waited inside the jail because some of the protestants were sitting around and leaning on his truck. The only evidence supporting such a conclusion is the testimony of a deputy sheriff that the tradesman "came to the door and then did not leave." His remaining is just as consistent with a desire to satisfy his curiosity as it is with a restraint. Finally the fact that some of the protestants may have felt their cause so just that they were willing to be arrested for making their protest outside the jail

seems wholly irrelevant. A petition is nonetheless a petition, though its futility may make martyrdom attractive.

We do violence to the First Amendment when we permit this "petition for redress of grievances" to be turned into a trespass action. It does not help to analogize this problem to the problem of picketing. Picketing is a form of protest usually directed against private interests. I do not see how rules governing picketing in general are relevant to this express constitutional right to assemble and to petition for redress of grievances. In the first place the jailhouse grounds were not marked with "NO TRESPASSING!" signs, nor does respondent claim that the public was generally excluded from the grounds. Only the sheriff's fiat transformed lawful conduct into an unlawful trespass. To say that a private owner could have done the same if the rally had taken place on private property is to speak of a different case, as an assembly and a petition for redress of grievances run to government not to private proprietors.

The Court forgets that prior to this day our decisions have drastically limited the application of state statutes inhibiting the right to go peacefully on public property to exercise First Amendment rights. As Mr. Justice Roberts wrote in *Hague* v. *C. I. O.*, 307 U. S. 496, 515–516:

> ". . . Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views

on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

Such was the case of *Edwards* v. *South Carolina, supra,* where aggrieved people "peaceably assembled at the site of the State government" to express their grievances to the citizens of the State as well as to the legislature. 372 U. S., at 235. *Edwards* was in the tradition of *Cox* v. *New Hampshire,* 312 U. S. 569, where the public streets were said to be "immemorially associated" with "the right of assembly and the opportunities for the communication of thought and the discussion of public questions." *Id.,* at 574. When we allow Florida to construe her "malicious trespass" statute to bar a person from going on property knowing it is not his own and to apply that prohibition to public property, we discard *Cox* and *Edwards.* Would the case be any different if, as is common, the demonstration took place outside a building which housed both the jail and the legislative body? I think not.

There may be some public places which are so clearly committed to other purposes that their use for the airing of grievances is anomalous. There may be some instances in which assemblies and petitions for redress of grievances are not consistent with other necessary purposes of public property. A noisy meeting may be out of keeping with the serenity of the statehouse or the quiet of the courthouse. No one, for example, would suggest that the Senate gallery is the proper place for a vociferous protest rally. And, in other cases it may be necessary to adjust the right to petition for redress of grievances to the other interests inhering in the uses to which the public property is normally put. See *Cox* v.

New Hampshire, supra; Poulos v. *New Hampshire*, 345 U. S. 395. But this is quite different than saying that all public places are off-limits to people with grievances. See *Hague* v. *C. I. O., supra; Cox* v. *New Hampshire, supra; Jamison* v. *Texas*, 318 U. S. 413, 415–416; *Edwards* v. *South Carolina, supra.* And it is farther yet from saying that the "custodian" of the public property in his discretion can decide when public places shall be used for the communication of ideas, especially the constitutional right to assemble and petition for redress of grievances. See *Hague* v. *C. I. O., supra; Schneider* v. *State*, 308 U. S. 147, 163–164; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Niemotko* v. *Maryland*, 340 U. S. 268; *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87. For to place such discretion in any public official, be he the "custodian" of the public property, or the local police commissioner (cf. *Kunz* v. *New York*, 340 U. S. 290) is to place those who assert their First Amendment rights at his mercy. It gives him the awesome power to decide whose ideas may be expressed and who shall be denied a place to air their claims and petition their government. Such power is out of step with all our decisions prior to today where we have insisted that before a First Amendment right may be curtailed under the guise of a criminal law, any evil that may be collateral to the exercise of the right, must be isolated and defined in a "narrowly drawn" statute (*Cantwell* v. *Connecticut, supra*, at 307) lest the power to control excesses of conduct be used to suppress the constitutional right itself. See *Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry*, 301 U. S. 242, 258–259; *Edwards* v. *South Carolina, supra*, at 238; *NAACP* v. *Button, supra*, at 433.

That tragic consequence happens today when a trespass law is used to bludgeon those who peacefully exer-

cise a First Amendment right to protest to government against one of the most grievous of all modern oppressions which some of our States are inflicting on our citizens.

What we do today disregards the admonition in *DeJonge* v. *Oregon*, 299 U. S. 353, 364–365:

> "These [First Amendment] rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Today a trespass law is used to penalize people for exercising a constitutional right. Tomorrow a disorderly conduct statute, a breach of the peace statute, a vagrancy statute will be put to the same end.[3] It is said that the sheriff did not make the arrests because of the views which petitioners espoused. That excuse is usually

[3] In 1932 over 28,000 veterans marched on Washington, D. C., demanding a bonus, paraded the streets, and camped mostly in parks and other public lands in the District, Virginia, and Maryland only to be routed by the Army. See Waters, B. E. F. (1933).

given, as we know from the many cases involving arrests of minority groups for breaches of the peace, unlawful assemblies, and parading without a permit. The charge against William Penn, who preached a nonconformist doctrine in a street in London, was that he caused "a great concourse and tumult of people" in contempt of the King and "to the great disturbance of the peace." 6 St. Tr. 951, 955. That was in 1670. In modern times also such arrests are usually sought to be justified by some legitimate function of government.[4] Yet by allowing these orderly and civilized protests against injustice to be suppressed, we only increase the forces of frustration which the conditions of second-class citizenship are generating amongst us.

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[4] See, *e. g.*, *De Jonge* v. *Oregon*, 299 U. S. 353; *Feiner* v. *New York*, 340 U. S. 315; *Niemotko* v. *Maryland*, *supra*; *Edwards* v. *South Carolina*, 372 U. S. 229; *Cox* v. *Louisiana*, 379 U. S. 537; *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87. The same is true of other measures which inhibit First Amendment rights. See, *e. g.*, *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *City of Little Rock*, 361 U. S. 516; *Shelton* v. *Tucker*, 364 U. S. 479; *NAACP* v. *Button*, 371 U. S. 415. If the invalidity of regulations and official conduct curtailing First Amendment rights turned on an unequivocal showing that the measure was intended to inhibit the rights, protection would be sorely lacking. It is not the intent or purpose of the measure but its effect on First Amendment rights which is crucial.